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Illinois Issues

A publication of the University of Illinois Springfield

ILLINOIS DOCUMENTS

SEP 25 2011

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Gov. Quinn
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The situation in Illinois complicates the already strained relationship between unionized workers and the states that employ them





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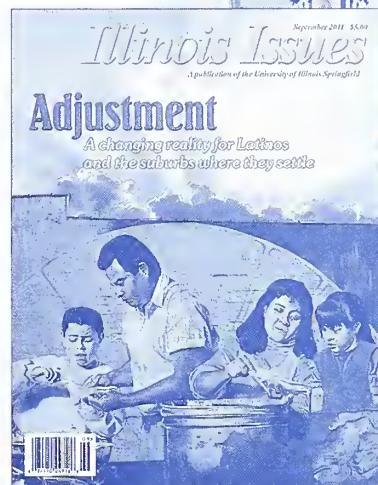
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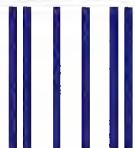


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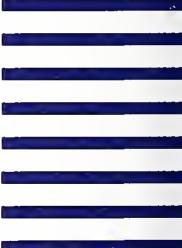
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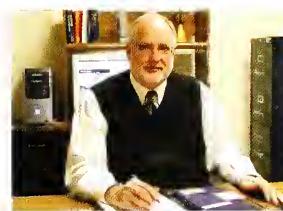
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Everyone with a social media account can be a reporter

ILLINOIS DOCUMENTS

SEP 26 2011

ILLINOIS STATE LIBRARY**Dana Heupel**

An old friend of mine died recently. His last days were chronicled in real time on Facebook.

First came a post that he was seriously ill and was in a nursing home awaiting test results. Then a post that he had been taken back to the hospital. Then that he and doctors had decided there was nothing else they could do. Then the hospice, and finally, his death.

Throughout those 13 days, his many friends communicated with him from wherever they lived across the country. Many were typical vagabond news types like me who had worked with him in one incarnation or another and had moved on to other pastures. Others were lifelong friends. Some probably were mere acquaintances. The hundreds of Facebook messages ranged from maudlin to distraught to humorous (my friend was a very funny guy) to religious. They retold his stories and remembered happy times and wished him a peaceful trip on his final journey. Every several days, the picture on his Facebook page changed, each time showing him in a situation from the past, provoking more memories and comments.

I'm certain my friend had help with his last posts, but we were assured that he was reading ours. In many ways, the whole experience was like a virtual wake, except the honoree was hearing the accolades and the eulogies. I'll admit that at first, it was a little uncomfortable, but in time, the communications became as natural as the end-of-life process that my friend was going through.

Social media began not all that long ago as a way for students to communicate with a number of friends at once. Most of those posts were trivial — many still are. But over the past few years, the various sites — Facebook, Twitter, MySpace, Google+ and more — have morphed into powerful forces. Twitter and Facebook were generally credited as the virtual town squares for the Arab Spring uprisings, and they often were the only sources of news to the outside world during the cyclone disaster in Myanmar and the devastating earthquake in China.

In many ways, the Facebook posts and Twitter tweets are no different from the headlines that scroll across the bottom of the television screen on news channels, or even the constant stream of updates on the old news tickers on the sides of buildings.

As someone who has spent the better part of four decades in communications, it is a sea change. For most of my life, it was only a select group of news media that reported on the issues — there were few other ways to obtain that information. Now, everyone with a social media account can be a reporter, with all of the good and bad implications that go along with it.

As news media, social networks are obviously best-employed for breaking stories. In many ways, the Facebook posts and Twitter tweets are no different from the headlines that scroll across the bottom of the television screen on news channels, or even the constant stream of updates on the old news tickers on the sides of buildings. Communication occurs in those short reports, but not with a lot of depth — and frequently not much balance. But what is different is social media's ability to get those snippets of news as they are happening to vast numbers of people instantly, no matter where they are. And the news isn't always handed down from on high by the traditional media; it often comes from "friends" on Facebook or those who use Twitter or other social networking sites.

Editor's Note continued

Illinois Issues has an active Facebook page (www.facebook.com/illinoisisissues) and several Twitter accounts. I have one, but I don't tweet much — I must admit I still feel a little silly even writing that sentence. Normally, I only use my Twitter feed when a new magazine issue goes online or when we are first to report a news item. I did once craft a tweet that read, "I'm not criticizing, but I like to believe that almost anything important and illuminating I have to say would require more than 140 characters" but I thought better of posting it for fear of revealing what a long-form journalism snob I was and offending those who were more enamored with social networking.

It's not that I don't want to be social; it's just that I don't necessarily want my friends — or anyone, for that matter — to know exactly what I'm doing every minute of the day. I don't have anything to hide; I just value what little privacy remains in our world.

At *Illinois Issues*, Jamey Dunn, our Capitol bureau chief, is the focal point of most of our social networking. She maintains our Twitter and Facebook accounts and reposts most of the items from our daily blog (<http://illinoisisissuesblog.blogspot.com>), along with posting other breaking news. Those who want to keep up with what she is doing on a daily basis should follow her on Twitter (@capitolbureau).

It's not that I don't want to be social; it's just that I don't necessarily want my friends — or anyone, for that matter — to know exactly what I'm doing every minute of the day. I don't have anything to hide; I just value what little privacy remains in our world.

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Contents

Volume XXXVII, No.10

Departments

Editor's note

New age
of communication
by Dana Heupel

3

State of the state

Free speech vs.
sensitivity
by Jamey Dunn

6

Noteworthy

People

34

Letters

36

Ends and means

Ethics should
be on the agenda
by Charles N. Wheeler III

37



Features

Unions vs. government

The situation in Illinois
complicates the already
strained relationship
between unionized
workers and the states
that employ them.

by Kevin McDermott

16

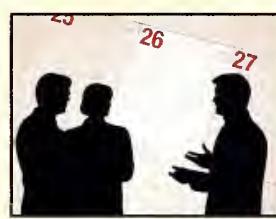


Point/counterpoint Two sides of the pension debate

Illinois Education
Association and the
Illinois Policy Institute.

by Cinda Klickna
and Marc Levine

24



Up next

How will lawmakers
handle Gov. Pat
Quinn's objections to
major pieces of
legislation?

by Jamey Dunn

20

After abolition

Work remains for
those who help the
wrongfully convicted.

by Kurt Erickson

28



Q&A

Julie Hamos

by Dean Olsen

31

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Jamey Dunn

Illinois aims to balance free speech and sensitivity

After a ruling from the U.S. Supreme Court allowing a hate group to continue protesting at funerals, Illinois and other states seek a balance between constitutionally protected speech and sensitivity for grieving families.

The Supreme Court ruled in the spring that protests by the Westboro Baptist Church at military funerals are protected by the First Amendment. The Kansas-based organization was founded in 1955 by Fred Phelps. The majority of its members are related to Phelps, and the group has been at the center of highly controversial protests for years. In the past 20 years, Westboro has picketed nearly 600 funerals. Members of the congregation believe that God hates America for being permissive on sin, and the country is being punished through the deaths of soldiers and tragic events like the September 11 terrorist attacks.

Albert Snyder — the father of Marine Lance Cpl. Matthew Snyder, who was killed in a Humvee crash in Iraq — sued the church after they protested near his son's funeral in Maryland in 2006. A jury awarded Snyder more than \$10 million for the church's infliction of emotional distress as well as other offenses. "At trial, Snyder described the severity of his emotional injuries. He testified that he is unable to separate the thought of his dead son from his thoughts of Westboro's picketing," the Supreme Court opinion said, "and that he often becomes tearful, angry and physically ill when he thinks about it."

The church argued that the ruling was excessive, and a judge knocked the settlement down to \$1 million. However, an appellate court sided with Westboro that it could not be held liable for the speech under the First Amendment, and the Supreme Court agreed.

The case came down to whether the congregation's behavior amounted to a personal attack on the Snyders or a message for the populace at large. The court cites a previous case, *Connick v. Myers*: "[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection."

However, the justices acknowledged that the standards are a bit hazy for determining what speech is on a matter of public concern. The opinion says public speech can "be fairly considered as relating to any matter of political, social, or other concern to the community" or if it "is a subject of general interest and of value and concern to the public."

The court cited the case *Garrison v. Louisiana* when explaining why such speech demands special protection under the law. "Speech concerning public affairs is more than self-expression; it is the essence of self-government."

On the day of Mathew Snyder's funeral, Westboro members protested about 1,000 feet from the church where services were held. They cooperated with local police, and their demonstration took place without violence. The group held up signs with messages that included: "Thank God for Dead Soldiers," "Fags Doom Nations," "America is Doomed," "Priests Rape Boys" and "You're Going to Hell." They sang songs and recited Bible verses.

"While these messages may fall short of refined social or political commentary, the issues they highlight — the political and moral conduct of the United States and its citizens, the fate of our nation, homosexuality in the military, and scandals involving the Catholic clergy — are matters of public import," the Supreme Court ruling said.

But Albert Snyder says the protest was personal to him. "That's the way the Supreme Court looked at it, and that's not the way I looked at it." His lawyers argued that the group targeted his family and used the ties to national issues as a cover. The majority of the justices did not agree. "Westboro had been actively engaged in speaking on the subjects addressed in its picketing long before it became aware of Mathew Snyder, and there can be no serious claim that the picketing did not represent Westboro's honestly held beliefs on public issues. Westboro may have chosen the picket location to increase publicity for its views, and its speech may have been particularly hurtful to Snyder. That does not mean that its speech should be afforded less

Albert Snyder — the father of Marine Lance Cpl. Matthew Snyder, who was killed in a Humvee crash in Iraq — sued the church after they protested near his son's funeral in Maryland in 2006.

than full First Amendment protection under the circumstances of this case."

However, Justice Samuel Alito wrote in his dissenting opinion that he thinks Snyder was personally targeted because he was a Catholic and a member of the U.S. military. "Since [church members] chose to stage their protest at Matthew Snyder's funeral and not at any of the other countless available venues, a reasonable person would have assumed that there was a connection between the messages on the placards and the deceased." He says group members committed an action they are liable for — inflicting emotional distress and defaming the character of a private individual — to get their message out. So, while the message may be public speech, any attack on Snyder is not. Alito argued that signs with messages such as "You're Going to Hell" could be construed as personal attacks on Matthew Snyder.

Albert Snyder is now working with state and local governments to help them craft laws to restrict protests at funerals, something that many feel the court's ruling left a door open for. The court cited the *Frisby v. Schultz* case. "Even protected speech is not equally permissible in all places and at all times. Westboro's choice of where and when to conduct its picketing is not beyond the government's regulatory reach" — it is "subject to reasonable time, place, or manner restrictions." The court also cites a case, *Madsen v. Women's Health Center Inc.*, in which it created a zone protected from protesters around the entrance to an abortion clinic.

States are looking to such time and place restrictions to protect mourners from the protests. Gov. Pat Quinn signed **House Bill 180**, which outlaws "disorderly conduct" 30 minutes before and after a funeral and within 300 feet of the funeral as it is taking place. The new law extends the buffer zone from a 2006 law that called for protesters to be 200 feet away from services.

However, Yorkville Republican Rep. Kay Hatcher introduced **HB 180** with a boundary of 1,000 feet. She says the legislation was proposed to her by students working on a class project. They researched laws in other states before giving her suggestions. "They had done the due diligence before they ever brought it to me."

But Crest Hill Democratic Sen. A. J. Wilhelm cites other state laws, such as one in Missouri, that were tossed out by courts. "The last thing we want to do is have a law that's been on the books since 2006 be struck down because of becoming too aggressive."

He says Illinois' law does not target any particular message, only behaviors. "What differentiates our law from other states is that ours is content-neutral. So it doesn't matter what you're saying as

long as you're not disruptive." The law lists "singing," "chanting," "yelling" or noisemaking as potentially disruptive behavior. The law also prohibits the display of signs that have "any visual images that convey fighting words or actual or veiled threats against any other person" within the protected time and area around the funeral.

"I think most of the states are looking to see what other states have passed and working their laws around that," says Snyder. "For me it's not the distance as much as it is the time. ... They're not going to come to funerals and protest if it is not going to be right before and right after." He says federal restrictions would be the cleanest solution.

Snyder says that average families need the protection, while people with money, fame or high social status targeted by Westboro can often keep their loved ones' funerals secure. He points to the church's attempt to protest the funeral of Elizabeth Edwards, wife of former U.S. Sen. and past presidential candidate John Edwards, because of her positive stance on same-sex marriage. The small group of protesters was overwhelmed by a so-called line of love made up of hundreds of the late Edwards' supporters. "Don't get me wrong, I think that Elizabeth Edwards was a wonderful person," Snyder says. "The closest they got to her funeral was two miles."

Representatives of Westboro Baptist Church have vowed to challenge laws restricting funeral protests. When the Supreme Court ruling was issued, 43 states had some form of restrictive law, and the federal government restricts protests at national cemeteries, which are typically military cemeteries. The family has no shortage of lawyers to present challenges — 11 of Fred Phelps' 13 children are lawyers. His daughter, Margie Phelps, argued the church's case before the Supreme Court. Legal experts speculate that whatever laws are put into place, the Phelpses would likely abide and find ways to continue their protests. "They're good at this," Mark Potok, director of the Southern Poverty Law Center's Intelligence Project, told AOL news. "They understand the First Amendment very, very well. They are not stupid people. They are vile people." The group funds its operations in part through successful civil suits against communities that have violated their First Amendment rights.

We are a country with a proud history of defending the right to assemble publicly and the right to free speech, even the worst kinds of speech, and most would agree that the vitriol coming from Phelps and his ilk is some of the worst of the worst. "The record makes clear that the applicable legal term — 'emotional distress' — fails to capture fully the anguish Westboro's choice added to Mr. Snyder's already incalculable grief," the Supreme Court opinion said. This is a situation where it is tempting to tailor the law to stop a certain group from some kind of horrendous behavior. But lawmakers must also think about unforeseen consequences, consider more than just the situation at hand and create laws that are relevant for years to come.

It will likely be up to the courts to decide whether lawmakers find a compromise that protects speech in a way that upholds the principles of this country while looking out for the loved ones of the soldiers who fight and die protecting the safety that affords us such ideals. ■

Noteworthy

Legislative Checklist

Gov. Pat Quinn has been busy signing bills sent to him after the spring legislative session. Some of the new laws address home businesses, women's rights in the workplace and the collection of DNA from individuals suspected of serious crimes.

Illinois lottery

Senate Bill 2070, Public Act 97-0464 The law creates the Department of the Lottery. The lottery is part of the Department of Revenue, but this measure, sponsored by House Speaker Michael Madigan and Senate President John Cullerton, will make it a separate state agency. The state has leased management of the lottery to a private company, the Northstar Group, aiming to bring in additional revenue. Northstar will work with the new agency. The law goes into effect October 15.

Cottage foods

SB 840, PA 97-0393 Home chefs do not have to use an industrial kitchen to make baked goods, jams, jellies and other foods to be sold by their families. Anyone making more than \$25,000 annually from the sale of cottage foods would have to upgrade to an industrial kitchen. The law is sponsored by Sen. David Koehler, a Peoria Democrat, and Rep. Lisa Dugan, a Bradley Democrat.

Insurance

SB 673, PA 97-0952 Insurance companies will be required to cover up to \$500 of programs and products recommended by smokers' doctors to help them quit. The law — sponsored by Sen. Heather Steans, a Chicago Democrat, and Rep. Sara Feigenholtz, a Chicago Democrat — goes into effect on January 1.

School safety

HB 147, PA 97-0466 School bus drivers caught intoxicated on the job will lose their licenses to drive a bus for three years. Drivers who refuse a test will also have their licenses suspended for three years. The law, sponsored by Bradley Democratic Rep. Lisa Dugan and Olympia Fields Democratic Sen. Toi Hutchinson, goes into effect on January 1.

HB 3298, PA 97-0361 Schools can give injections to children having allergic reactions. School nurses are authorized to administer epinephrine auto-injectors, also known as EpiPens, to students with severe allergies. Elmhurst Republican Rep. Chris Nybo and Evanston Democratic Sen. Jeffrey Schoenberg sponsored the bill.

DNA database

HB 3238, PA 97-0383 Beginning next year, individuals arrested for certain crimes, such as murder and sexual assault, may have their DNA collected by the state after an indictment from a grand jury or a judge finds there is probable cause to go ahead with a trial. If a defendant is not convicted or a conviction is overturned, the state is required to destroy the DNA sample. Former Chicago Democratic Rep. Susana Mendoza and Chicago Democratic Sen. Kwame Raoul sponsored the legislation.

FOIA

HB 1716, PA 97-0579 Public bodies will have more time to reply to Freedom of Information Act requests from so-called recurrent requestors. Under the law, sponsored by Chicago Democratic Rep. Barbara Flynn Currie and Oak Park Democratic Sen. Don Harmon, a recurrent requestor is anyone who has made more than 50 requests in a 12-month period, 15 requests in a 30-day period or seven requests in a seven-day period. Members of the media and nonprofit, scientific or academic organizations are exempted from the law.

Workplace rights

SB 1122, PA 97-0596 Employers cannot discriminate against pregnant women when making hiring, firing and promoting decisions. Rep. Jack Franks, a Marengo Democrat, and Sen. Terry Link, a Waukegan Democrat, sponsored the measure.

Appointments

HB 2972, PA 97-0582 Executive appointees can no longer serve beyond their appointed terms without being reconfirmed by the state Senate. Under the law, sponsored by Chicago Democratic Rep. Arthur Turner and Senate President John Cullerton of Chicago, the governor cannot appoint someone as an acting director if the Senate has already rejected that person's nomination as director.

Hunting

HB 1724, PA 97-0031; HB 6, PA 97-0019 Hunters can add muskrats and river otters to the list of animals they can legally hunt or trap. **HB 6** creates a trapping season for muskrats and was sponsored by Salem Republican Rep. John Cavaletto and Morris Republican Sen. Sue Rezin. Rushville Democratic Sen. John Sullivan and Milan Democratic Rep. Patrick Verschoore sponsored **HB 1724**, which creates a hunting and trapping season for river otters.

James Dunn

White objects to new law involving Amish residents

Illinois Secretary of State Jesse White doesn't favor issuing picture-less identification cards, though a new law gives him authority to exempt the Amish from the photograph rule.

Rep. Adam Brown, a Decatur Republican, and Sen. Dale Righter, a Mattoon Republican, sponsored legislation to exempt people of certain religious groups from a requirement to have a photo on their state identification card. They represent a large contingent of Amish individuals in their districts who object to the public display of their photographic image.

Changes in federal law requiring photo identification cards for financial transactions have prompted a real challenge for constituents who oppose being photographed because of their religious convictions, Righter says.

The details of the law, including how the identification card can be used, have been left for the secretary of state to decide, he says.

The legislation allows the secretary to determine which religious sects and orders the law applies to based on "bona fide" convictions, according to **HB 1484**.

"The concern we have and the concern that Secretary White outlined is that with an identification card you need to have a picture to match the person," Henry Haupt, spokesman for White, says.

Secretary White has worked hard to ensure that Illinois driver's licenses and ID cards are as fraud-proof and counterfeit-proof as possible, Haupt says. The cards that were overhauled a few years ago have more than a dozen security features. "We do not want the integrity of the ID card to be compromised in any manner."

Brown was surprised by White's concerns. The secretary of state, Illinois State Police and the Amish community were involved in talks and the creation of the bill, he says.

"It was definitely shocking to me that the secretary of state would voice concerns three months after we passed the bill and after we worked with his office on the bill," Brown says.

"I think that if you take an in-depth look at the bill, there are safeguards built into it — either a fingerprinting mechanism or photographs for internal use," he says.

Righter says he is hopeful that a solution is possible. "I think absolutely there is a common sense answer here for us to work with the secretary of state's office in order to allow these people to continue to conduct reasonable everyday financial transactions ... and not be out of compliance with federal law."

There is a legitimate distinction between using this ID for a financial transaction and boarding a plane, he says.



A sign near Arcola, an area where many Amish live

"That would be a significantly different issue. That is not what we are looking for, and the secretary of state's office knows that," Righter says.

But the secretary of state is opposed to the idea of allowing the identification card to be used for certain purposes.

"Where do you draw the line?" Haupt says.

The secretary's position is that there must be a photo on the ID card to be a functional ID card, he says.

Kendall Cramer

Illinois college draws national attention with LGBT question

Elmhurst College drew national attention after an advocacy group touted the west suburban school as being the first in the country to question students on an admission form about their sexual orientation.

The application for 2012-13 students includes the optional question: "Would you consider yourself a member of the LGBT (lesbian, gay, bisexual, transgender) community?" Although other students may ask students about their interest in LGBT issues, Elmhurst is the first to directly ask the question, according to the Charlotte, N.C.-based advocacy organization Campus Pride.

"The move by Elmhurst administrators to include this question represents a distinct and unique paradigm shift in higher education to actively recognize ... LGBT youth populations and to exercise greater responsibility for LGBT student safety," said Shane Windmeyer, Campus Pride executive director, in a prepared statement. "For the first time, an American college has taken efforts to identify their LGBT students from the very first moment those students have official contact with them. This is definite progress in the right direction — and deserves praise."

The question came out of student participation in the process that generates the admission form, says Dean of Admission Gary Rold. He says it is standard practice in his office to re-evaluate the effectiveness of procedures.

"We knew there would be some raised eyebrows, but we accept that. We're being consistent with our philosophy and our traditions and our mission. We didn't do this in isolation from students. We are a welcoming place."

In a letter to the campus community, Elmhurst President Alan Ray explained how that welcoming nature could come into play. He wrote: "The self-identified LGBT student brings distinct perspectives and experiences to campus, which add significantly to our cultural diversity. Of course, among our core values is our commitment to cultural diversity and to fostering mutual respect among all persons. Moreover, the best research in the field shows that undergraduates learn better when they engage a wide range of persons both like and unlike themselves. They prepare better for life in a highly diverse society and a multicultural world. For all of these reasons, we intentionally recruit students of color, students from a wide geographic area, first-generation students and many others. In short, self-

identified LGBT students add to our campus mix and thus enhance the education of all of our students."

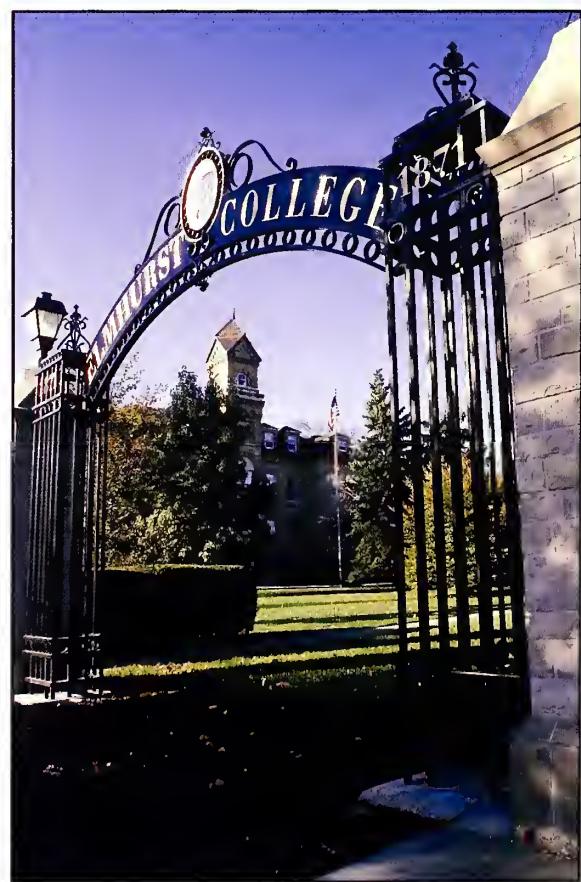
The 3,000-student campus is affiliated with the United Church of Christ, which Ray wrote, "describes itself as 'extravagantly welcoming.'"

Reaction to stories peppered newspapers across the nation has been mixed, according to Ray. Rold, who says he had conducted about 15 print, radio and television interviews, notes: "It's gotten quite a bit of attention. Frankly, it surprised us."

According to the *Chronicle of Higher Education*: "Admissions officials elsewhere continue to discuss how — or if — colleges should ask applicants similar questions. This year the Common Application's board members discussed the possibility of asking applicants about their sexual orientation, but they ended up deciding against it — at least for the time being."

Maureen Foertsch McKinney

Photograph courtesy of Elmhurst College



For more news, see the *Illinois Issues* website at <http://illinoisisissues.uis.edu>

Safe-haven law expanded

Parents seeking a way to safely and legally give up their newborn infants now have more options under a new law that expands "safe-haven" locations in Illinois.

Gov. Pat Quinn signed off on legislation in August that increases the number of safe-haven facilities by including any open and staffed district headquarters of the Illinois State Police and university police stations. The law applies to both public and private colleges and universities.

Illinois' safe-haven law allows parents to anonymously relinquish an unharmed newborn to personnel at a hospital, emergency medical care facility, or police or fire station without fear of prosecution for abandonment. The infant must be 30 days old or younger.

Rep. Naomi Jakobsson, an Urbana Democrat who was chief sponsor of **HB 106**, was made aware of the issue by the University of Illinois Urbana-Champaign (UIUC) police department, she says.

"The legislature had narrowly defined what a police station was, so we thought it was important to have that definition expanded to include university police departments and the state police headquarters to give more options to people in that situation who might be desperate enough to feel they need to abandon their child," says Lt. Tony Brown of the UIUC police department.

"It's really important because a lot of times there are students who might find themselves in a situation ... where they realize they are not going to be able to care for an infant, [and] they are

not always acquainted with the community as well as they are with a campus," Jakobsson says.

The police department has optionally complied with the law since it was put on the books about a decade ago, Brown says.

"Technically, if someone had abandoned their child here, that would have been [illegal] abandonment since we were not a safe haven," he says.

Colleges and universities have had the option of whether to comply with Illinois' safe-haven law because they were not included in the definition of "police station."

"If a child were left prior to the amendment to this law, we would have cared for it just as if it had been part of the law from the beginning," says Todd Sigler, director of the police department at Southern Illinois University Carbondale.

The department has the resources to ensure the safety of an abandoned child and would confront the situation the same as other incidents in which an individual is in danger, he says.

"We are in the business of life-safety issues, and while this may not be a life-safety issue in the sense that someone is injured and unconscious on the side of a roadway as a result of an auto accident, it's a life-safety issue in that you have an individual who cannot care for itself, and we would make arrangements to make sure that is done," Sigler says.

Illinois adopted the Abandoned Newborn Infant Protection Act in 2001. Since implementation, 64 newborns have been relinquished at safe-haven facilities, according to Quinn's office.

Kendall Cramer

Higher standard created for incarcerating juveniles

Starting next year, judges sentencing juvenile offenders will have to consider all other options before sending children to detention centers.

House Bill 83 will require courts to review several factors, including criminal background, education, age and mental health, before incarcerating youth offenders. If a child has taken part in other programs or received alternative sentencing, the court will be required to consider why they may not have worked. "If a kid was placed in an alternative school and didn't go, why? ... Was there a transportation problem? Is this really not the right match for the kid. What's going on here?" says Elizabeth Clarke, president of the Juvenile Justice Initiative.

Judges will also be required to consider all available alternatives to locking kids up, including community-based services in their area. "Judges feel that they don't have enough info about alternative services," Clarke says. "Making a decision based on the least restrictive alternative entails knowing what the least restrictive alternatives are."

She says a new statewide online database of youth service providers will help to get information to courts. "Removing children from their homes and committing them to the custody of the Department of Juvenile Justice is a serious decision with far-reaching ramifications, which is why it is critical that our justice system better examine other alternatives," said Maywood Democratic Rep. Karen Yarbrough, a sponsor of **HB 83**, in a written statement.

Clarke says recent reforms to the juvenile justice system are about creating an individual plan to address each child's needs.

"According to the Juvenile Justice Initiative, youth who are incarcerated are twice as likely to reoffend and housing one juvenile offender costs the state about \$85,000 a year. Not only is incarceration expensive — it doesn't work. Community programs that follow nationally recognized best practices and focus on improving family and educational functioning have far better success at turning youth away from delinquency and keeping them involved in productive activities. Thus, we hope this change will remind juvenile courts to review all available options and exhaust every possible alternative prior to giving up on the youth," Chicago Democratic Sen. Annazette Collins, who sponsored **HB 83** in the Senate, said in a prepared statement.

The new law will also help to bring in federal funds for children who, for a multitude of reasons, cannot stay at home. Clarke says some kids end up in the system largely because of such factors as being homeless or having severe mental health issues. Language in the bill paves the way for federal grants to assist such children through foster care, group homes and residential treatment.

Clarke says the new law is just another stride in the state's efforts to prioritize treatment and rehabilitation instead of punitive correction, especially for nonviolent offenders. "I think there is a wave of going back and embracing the original intent of the juvenile court all across the country," she says.

"What's exciting in Illinois is that it is so bipartisan. It's just a wonderfully progressive group of legislators that have worked so hard to educate themselves on the issues of juvenile justice."

Jamey Dunn

Three hospitals lose tax exemptions

The Illinois Department of Revenue ruled that three hospitals in the state do not meet the requirements for a property tax exemption given to charitable organizations.

The department determined that Northwestern Memorial Hospital's Prentice Women's Hospital in Chicago, Edward Hospital in Naperville and Decatur Memorial Hospital do not qualify for the exemption based on requirements set by the Illinois Supreme Court last year. The court ruled that Provena Covenant Medical Center in Champaign County should be stripped of its tax exemption because it did not fit the definition of a charity. The court's ruling noted that "treatment was offered to all who requested it, and no one was turned away by [Provena Covenant Medical Center] based on their inability to demonstrate how the cost of their care would be covered." However, that was not enough for the organization to qualify for a tax exemption for charitable organizations. "As a practical matter, there was little to distinguish the way in which Provena Hospitals dispensed its 'charity' from the way in which a for-profit institution would write off bad debt," the opinion said.

The department looked for five characteristics that it says define a charitable institution: it has no stock or shareholders; it gets most of its funding from private or public charity; it helps all who have a need or apply; it does not provide a profit to any person connected to it; and, it "places no obstacles in the way of those who need and would avail themselves of charity."

Northwestern Memorial Hospital's Prentice Women's Hospital reported a net total of \$1.18 billion from patient care in its 2007 application for the tax exemption. Edward Hospital brought in \$448 million for care, according to its 2007 application. Decatur Memorial Hospital netted \$252 million from treating patients in 2006.

According to the department, none of the three hospitals included charity care in their financial statements. Each facility reported the care separately. Northwestern Memorial Hospital's Prentice Women's Hospital gave charity care equal to 1.85 percent of its net revenues, Edward Hospital gave 1.04 percent and Decatur Memorial hospital gave 0.96 percent.

"There is no state money at issue in these property tax exemption denials. The fundamental question is whether hospitals operate as businesses or as charities," said a statement from the Department of Revenue.

Northwestern Hospital says that the land where the women's hospital stands, which was previously used by Wesley Memorial Hospital and Northwestern University, has not been taxed for almost 100 years. According to the hospital, its charity care has expanded over the past six years.

"As part of an academic medical center, our tax exemption permits us to reinvest in the health of our community and to continue to provide life-saving diagnostics and treatments, research into



groundbreaking cures and in teaching the next generation of physicians and other care providers. We are proud of our nationally recognized community service programs as well as our position as one of the top providers of free and discounted care in the state of Illinois," a statement from the hospital said. The hospital's statement said the organization will "review" its options for pursuing the exemption.

For more on Provena and the standard for the charitable property tax exemption, see page 26, *Illinois Issues*, September 2009.

James Dunn

2011 Roster
of State Government Officials

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**Updates to listings in the
2011 Roster of State
Government Officials
are available at
the Illinois Issues
website:
<http://illinoisisissues.uis.edu>**

Law lets county boards in on renewable energy business

A new law gives county boards in Illinois the authority to establish renewable energy districts and generate additional revenue.

In August, Gov. Pat Quinn signed **HB 1487**, which creates the Renewable Energy Production District Act [**PA 97-0265**]. Rep. Chad Hays, a Catlin Republican, sponsored the bill in the House.

The law allows county boards, pending approval through a voter referendum, to construct, operate and maintain renewable energy facilities powered by solar, wind, crops, biowaste, fuel cells and hydroelectric energy.

County boards can contract with private or public entities and can sell the produced energy. Revenue collected from the energy sales must be remitted back to that county.

"The hope is twofold. One, it would facilitate an avenue for local individuals to take control over new renewable energy production, and No. 2, it would be my hope in the long run, this will be a vehicle to lower property taxes for counties in which these districts are set up," Hays says.

Rantoul Township Supervisor Jim Rusk was involved in the creation of the bill. Rusk and a colleague came up with the concept in 2009.

"The idea is to create energy in a commercial setting, take that energy, sell it, take the money from it, give it back to the tax entities and drop property taxes by that amount," Rusk says.

U of I Institute of Aviation to be grounded

The University of Illinois Board of Trustees has voted to close the university's Institute of Aviation, which has provided flight training since 1946.

In a 6-2 decision in July, trustees approved a measure to close the institute, citing "high cost, declining enrollment and adverse impact on the campus academic profile, and the relative weakness of the institute's connection to the central mission of the campus."

The campus Academic Senate voted 57-54 in April not to approve a Senate educational policy committee recommendation to close the institute. Despite the decision, there was a clear basis for closing and ending the undergraduate programs, according to then-interim Vice President and Chancellor Robert Easter.

"The campus is proud of the Institute of Aviation's long and prestigious history as a leader in aviation education. The decision to recommend closure of the Institute of Aviation has not been reached lightly, in haste or unilaterally," Easter said to the board.

Campus administration found that it was in the best interest of the university to close the institute and its undergraduate programs, according to the measure approved by the trustees.

Enrollment in the program dropped by more than 50 percent between 2002 and 2010. The institute is the smallest degree-granting unit but has the highest cost-to-educate-per-undergraduate unit on campus, Easter said.

The closure of the institute has been considered multiple times over the years, as early as 1974. It is estimated that closing the institute will save the university \$500,000 to \$700,000 per year, Easter said.

"It seems like every 20 years or so the campus tries to shut us down, and no one out here truly understands why because the financial savings is a mere pittance. Outside of campus administration, I have not run across anyone who sees the sense in

Counties are not limited to wind energy, he says.

"You can take it in different directions. That's the beauty of the bill. It's a renewable energy district," Rusk says.

A group of Champaign county residents have formed a renewable energy group with plans to run a referendum this spring to create a district, he says.

"I think if Champaign County does a good job, they could be a model for the state," Rusk says.

Renewable energy production will not occur in one big swoop, Hays says. It will be a work in progress.

"I think wind energy is part of a multifaceted future for energy production in this country. Right now, wind energy and other new renewable energy sources do not account for a great percentage of the energy that is utilized in our state, particularly in downstate," Hays says.

Wind and other renewable energy sources will be part of the vernacular for a long time, he says.

"I think it is just another opportunity to clear a path for local-generated renewable energy to have the local citizens in charge of what they would like to do, what they would like to see, and then the residual benefit being, hopefully, a relief from some of the tax burden that I think all citizens would like to see," Hays says.

Kendall Cramer

this decision," says chief pilot Sybil Phillips, who has been with the institute for 25 years.

"Our graduates go on to be very successful in the aviation industry," she says.

The institute's closure will cut off a pipeline to the aviation industry at a time when demand is growing. Many pilots in the major airlines are up for retirement, she says.

"Although not always the case, this year our graduates have jobs, while there are graduates in other programs who are having a hard time finding a job right now," Phillips says.

The board of trustees anticipates the institute will close following the 2013-2014 academic year, allowing current students to finish their degrees.

The University of Illinois Urbana-Champaign owns and operates nearby Willard Airport. In 2010, the Stewarding Excellence @ Illinois team was given the task of evaluating the institute's fiscal and academic fit within the university. The team also examined the impact the institute's closure would have on the airport.

"While the team was unable to come to an overarching conclusion regarding the long-term viability of the Institute of Aviation, they concluded that eliminating or significantly reducing the institute would be unlikely to impact commercial airline service at Willard Airport," Easter said.

There are at least three ways the institute's closure will affect Willard Airport, says Stephen Wanzek, airport manager. The loss of fuel purchases will have a financial impact on the airport, he says.

"Flight school accounts for 80 percent of the activity (take off and landings) at the airport. It's going to be pretty quiet," Wanzek says.

The Federal Aviation Administration also has a training facility at the airport, but with the closure of the institute and the loss of air traffic, he expects the facility will dissipate.

Kendall Cramer

New standards to be set for higher education budgeting

Illinois' colleges and universities will be rewarded for improving student outcomes, under a new law that requires the Illinois Board of Higher Education to base budget recommendations on performance measurements.

Gov. Pat Quinn approved **HB 1503** in August, establishing a commission to develop a performance measurement system to allocate state funds to Illinois' public institutes of higher education.

The performance measurement system is designed to focus on maintaining the quality of degrees, achieving course completion rather than course enrollment and supporting at-risk students, including minorities and first-generation students.

Democratic Rep. Mary Flowers of Chicago says she sponsored the bill in response to a 2010 IBHE report, *The Illinois Public Agenda for College and Career Success: A Renewed Look at Higher Education in Illinois*.

"The report starts off by saying that in Illinois there is a tale of two states: One for the haves, and one for the have-nots," Flowers says.

Some students have fallen by the wayside through no fault of their own and are not ready for college, she says. Tuition has also increased, and getting into college has become more difficult.

The *Public Agenda* is a blueprint for Illinois to increase college attainment and affordability, strengthen Illinois' workforce and build an economically competitive state, according to the website ibhe.org.

"Frankly, we had some schools that were doing a much better job in terms of retention and graduation rates than others, and all they were getting was kind of like a tap on the back saying, 'Hey, you did a

good job.' This will give some incentives for schools to do more, not just related to graduation retention, but other issues as well," says Democratic Sen. Edward Maloney of Chicago, a chief sponsor of the bill.

The performance metrics have not yet been developed but will be specific to each university, he says.

"We are not going to flat out compare Chicago State University or Northeastern Illinois University with the University of Illinois at Urbana-Champaign and have them measured the same way. You need to take into consideration the unique characteristics and mission of each university," Maloney says.

The process of determining performance metrics will not be done in any kind of unilateral fashion, says IBHE Executive Director George Reid.

"We expect there will be lots of collaboration as we move forward in the establishment of state goals," he says.

There are two schools of thought about the percentage of a university's budget that will be affected. If new money is available in the budget, 2 percent to 5 percent might be set aside for performance funding. If new money is not allocated in the budget, a percentage of their existing budget might be set aside, Reid says.

"Those are the kinds of issues that we know will affect the institutions greatly and which we are going to have lots of conversations [about] until we can agree to what the process ought to be," he says.

Representatives from the governor's office, the legislature, higher education, business groups and other organizations will serve on the commission.

Kendall Cramer

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Catholic group still seeks pacts with the state on adoptions despite civil union dispute

Catholic Charities organizations throughout Illinois continue to fight for a contract with the state to provide foster care and adoption services as the Department of Children and Family Services works on a plan to shift thousands of children from Catholic church-sponsored care.

Shortly after the passage of Illinois' new civil unions law, Catholic organizations began lobbying lawmakers to carve out an exemption that would allow them to refer couples in civil unions seeking to become foster or adoptive parents to another agency. Their effort failed, and the state did not renew contracts with the organization for the new fiscal year, which started in July, because the group said it could not place children with couples in civil unions.

After DCFS announced it would not renew the contracts, the Thomas More Society, a conservative legal organization, launched a lawsuit challenging the state's right to end agreements. Sangamon County Circuit Judge John Schmidt ruled that Catholic Charities was not entitled to do business with the state. "No citizen has a recognized legal right to contract with the government," the opinion said. The Thomas More Society sought a stay of the ruling and plans an appeal. "Catholic Charities is one of the lead providers of foster care services in the state. They have been valued partners for decades. Clearly the intent of the civil union law was not to force the state to end these contracts and force the transfer of thousands of children's cases," Bishop Daniel Jenky of the Diocese of Peoria said in a written statement.

Legal organizations that pushed for civil unions in the state say the judge made the correct decision. "The court correctly concluded on procedural grounds that the state could decline to renew its contracts with four dioceses of Catholic Charities. The state chose not to renew their contracts because they insisted on violating state and federal law by refusing to place children in the



homes of couples in civil unions. Illinois correctly determined that this practice was bad for kids, could deny many of them their best opportunity for a better life, and that the state's obligation was to make the transition to other providers as seamless as possible," Camilla Taylor, director of Lambda Legal's Marriage Project, said in a prepared statement.

DCFS is working on a plan to shift all of the approximately 2,000 foster care and adoption cases administered by Catholic Charities to other social service providers. The department already moved 300 children to a new agency in June after Catholic Charities of Rockford announced it would no longer handle the cases. Spokesman Kendall Marlowe says that ideally, children and families aren't even aware of the shift because caseworkers move to a new agency as well. "The only change that the child and foster family may perceive is a different logo at the top of the letterhead. All that has to change is the agency supervising the case." Marlowe says that the department is moving forward with its work and plans to have all cases moved to new agencies by sometime this fall. "We would obviously respect any court orders that come down. But in the meantime, our orderly process goes forward."

Marlowe says that the child welfare system in the state, which is overwhelmingly administered by social service providers contracted with the state, is strong largely in part because of the work of Catholic Charities over the years. He says the group is one of the pioneer providers that lobbied the state and helped urge the creation of DCFS.

"Catholic Charities has done great work for children and families for decades," Marlowe says. "No one wanted to see Catholic Charities leave this field, but the child welfare system they helped build is strong enough to handle this transition."

Jamey Dunn



Feature

by

Kevin McDermott



Unions vs. government

The situation in Illinois complicates the already strained relationship between unionized workers and the states that employ them

When Chris Matthews of MSNBC's *Hardball* needed a guest early this year to express progressive outrage at the treatment of Wisconsin's public-sector union workers, Illinois Gov. Pat Quinn was a natural choice.

Quinn's Democratic administration had openly offered Illinois as a sort of Midwestern Switzerland to Wisconsin legislators who fled their state, hoping to stop Republican Gov. Scott Walker's

attempt at what critics said was classic union-busting directed at state workers there. Quinn himself was a lifelong progressive known for praising labor in terms effusive enough to make a union steward blush.

"It's a war on workers, the people who teach our kids, who plow the snow off our interstates. Those are working men and women, and they deserve a decent pay and decent retirement," Quinn said in

that February 28 airing of *Hardball*, delivering flawlessly in his role as outraged pro-union governor. He called unions “the heart and soul of Illinois, the heart and soul of Wisconsin, the heart and soul of our country,” and lauded union workers as soldiers on “the front lines of democracy.”

“The right to have a union and to collectively bargain ... that’s a fundamental American right,” Quinn said. “What Gov. Scott Walker’s doing in Wisconsin is just plain wrong.”

By August, though, the script had changed. Illinois’ protracted fiscal crisis — which had already prompted a major income tax hike, teacher layoffs and billions of dollars in unpaid bills — now hit those working men and women. Quinn announced in July he wouldn’t honor a 2 percent scheduled pay increase for 30,000 workers throughout state government, despite the fact that it was written into their union contracts, because the legislature hadn’t appropriated the money.

“You can’t give money that isn’t there,” Quinn told reporters during State Fair week in mid-August, as he was confronted with the embarrassment of his one-time supporters in labor picketing in anger at him outside each of the fairground gates.

One of them, Philip Mark, a Chicago-based state Department of Human Services employee, had some choice words that day for the man who had touted labor’s virtues to a national audience just a few months earlier.

“It’s about killing the union. The bastard,” Mark told a reporter, when asked about Quinn.

“Don’t use that,” Mark quickly added. Then he pondered a moment longer and said: “No. Go ahead and use it.”

And in September, Quinn said he would have to close seven facilities and lay off more than 1,900 state employees, despite a promise he had made to AFSCME workers before last year’s election that their jobs were safe.

It’s perhaps understandable if Illinois state employees aren’t sure where the line is when it comes to excoriating their governor. Unlike workers in several other states, they’re not used to doing it. While Quinn’s relationship with AFSCME, the two teachers’ unions and others in public-sector labor has often been strained, all sides have tended to present it as a dispute among friends.

That dynamic may have fundamentally changed with Quinn’s nixing the pay raises and with other issues this year. Even as Quinn’s decision sent AFSCME workers to court and to the picket lines, House leaders in both parties were dropping hints

that they intend to take another shot during the legislature’s fall veto session at rolling back state employee pension benefits, in an effort to rein in the state’s projected pension deficit of \$80 billion or more.

Those issues will play out in Springfield and the courts through the fall. AFSCME has already scored one victory, winning an arbitrator’s decision on Quinn’s refusal to approve the pay raises and suffered one defeat after a judge tossed out a union lawsuit against the state.

But whatever happens here, the Illinois showdown has already complicated the national public-union debate that’s been in play in Wisconsin and other states all year, with some ominous undertones for labor nationally.

Illinois is one place where union forces can’t claim, as they have elsewhere, that what they’re facing is just a Republican power structure cynically using fiscal excuses for the ideological goal of union-busting. When it’s Illinois Democrats, of all people, saying that traditional public-sector union rights and benefits have simply become too expensive for the taxpayer, it opens the difficult possibility for labor that it might be true.

“Here’s a guy [Quinn] who is a New Deal liberal all his life suddenly deciding to take on AFSCME, which is the strongest union in the country right now. It hurts him politically. ... Why would he do this unless he had to?” asks Chris Mooney, political scientist at the University of Illinois Springfield.

“You know what to expect from your enemies,” says Mooney, “but when your friends start talking like this, you have to consider that this is the way it is.”

It began in February in Wisconsin, which happens to have been the first state in America to give its state employees the right to collectively bargain. Walker, the new Republican governor, proposed legislation that critics said had little to do with the state’s budgetary problems and was instead designed to gut public-sector unions.

Walker proposed prohibiting collective bargaining by public employees except in wage issues; limiting raises without public referendum; restricting union rights to collect dues; and requiring higher employee contributions to health insurance and pension plans.

The resulting showdown drew intense national attention, largely because of the novel strategy of Wisconsin Senate Democrats fleeing the state, to Illinois, to prevent ruling Republicans in Madison



Members of AFSCME turned out at the State Fair to protest Gov. Pat Quinn's decision not to fulfill a promise of pay raises.

from enacting the legislation because they wouldn't have a quorum. The debate sparked massive pro-union demonstrations at the Wisconsin Capitol — not to mention Quinn's *Hardball* appearance, which today draws charges of hypocrisy from union officials.

Wisconsin Republicans ultimately pushed through their controversial package by changing their parliamentary procedures. That success appeared to embolden other Republican leaders in other parts of the country:

- In Indiana, Republicans pushed legislation that would restrict collective bargaining and prohibit required union membership.
- In Ohio, the now-famous **Senate Bill 5** went further, proposing to virtually end collective bargaining, allow the hiring of alternate workers during strikes and end binding arbitration for public employees who aren't allowed to strike.
- In New Jersey, Gov. Chris Christie, a rising GOP star, engineered a major benefit reduction for some 750,000 government workers and retirees while

ginning up his national profile by harshly criticizing unionized teachers at a series of town-hall meetings.

• In Florida, Gov. Rick Scott sought to limit union power to automatically deduct union dues from members' pay checks and to impose a requirement that the members give written consent before their dues are used for political purposes.

Those and other state-union conflicts throughout the country (as many as 22 of them, some still in play) "are not isolated stories," says Robert Bruno, professor of labor studies at the University of Illinois Champaign-Urbana.

Bruno calls it "an epidemic" of attacks on public-sector unions and attributes much of it to a strategy by Republicans of using economic hard times as an excuse to implement long-held goals of union-busting.

"They're certainly related to the recession and these terrible budget situations [in the states] and the 2010 elections," which swept Republicans and conservative Tea Party activists into Congress and

state offices, says Bruno. "It was the perfect storm. ... Unfortunately, it creates an opportunity for a lot of demagogic action."

Less easily dismissed as demagoguery, Bruno acknowledges, is the situation in Illinois, along with New York, Connecticut and other Democrat-held states that have also moved to scale back union power, pay and benefits.

"These are not [leaders] who are anti-collective bargaining," says Bruno. "I think the tenor of the times, the sense of crisis being generated — or ginned-up, depending on how you view it — tends to make it hard for even friendly Democrats to see viable options" in the face of devastated state budgets.

Labor strife is traditionally the purview of coal mines and factory floors. So why is it now playing out nationally in state capitals?

Partly it's because that's where most of the union workers are these days.

The U.S. Labor Department reported last year that union membership in the public sector nationally was still at a hefty 36.2 percent, while in the private sector it had dropped to 6.9 percent.

In plain numbers, there were 7.6 million public-sector union members in the United States last year, outnumbering 7.1 million private-sector union members — the first time in modern history that's happened.

That congregation of union power in the public sector comes at a time when the public sector is looking an awful lot like a bankrupt company. The whole point of unionization, from its very inception, was to provide a better life for workers, which inevitably costs more.

As Illinois and other states have literally seen the lights go out because of unpaid bills, it perhaps shouldn't have been difficult to predict that state employee salaries and benefits — reasonable or otherwise — would eventually get fed into the sausage-grinder of public fiscal debate.

The U.S. Bureau of Labor Statistics reports that the national average cost of each employee in the private sector as of March was \$28.10, including salaries and benefits. For employees in the public sector, that number was \$40.54.

Some of that gap is the logical result of structural differences between governments and private companies (which have more manufacturing and sales jobs, and fewer administrative and professional positions, making their payrolls cheaper by definition). But the report shows much of the gap is due to the more generous benefits for the public sector — especially defined retirement

benefits, which comprise 7.4 percent of the average cost of keeping a public-sector worker on payroll, compared with 1.5 percent for the private-sector worker.

In fact, Illinois government and the rest of the public sector is increasingly alone in providing traditional defined-benefit packages, as the private sector increasingly moves to 401(k)s and other plans that provide fewer expenses for employers (and fewer guarantees for workers).

Union officials don't dispute that the long-term shortfall in pension funds for Illinois, as in other states, is something that has to be dealt with. However, they maintain the problem isn't one of overly generous benefits but of elected officials who have spent decades putting off long-term pension payments to balance short-term budgets.

"Just like in other states, Wisconsin or Ohio, they're putting the blame on state workers," says Dwayne Hall, a Joliet-based state child protection investigator who was on the picket lines at the State Fair in August.

Especially upsetting to those employees is that the attack is coming from a normally pro-union Democrat like Quinn — and that in their eyes, it's about a lot more than budget issues.

"It's not just about our pay raises, it's about collective bargaining," says Marion Murphy, an AFSCME local president and state human services caseworker from Chicago. "Do I believe it's an attack on unions? Yes. ... Normally, we work together [with Democratic leaders]. It's very upsetting."

Quinn's response on that day was clearly an attempt to keep in place at least the idea that the historic alliance between his party and union workers is still on solid ground. He maintained that the problem is caused in part by decisions of the legislature, along with the stubborn restrictions of mathematics.

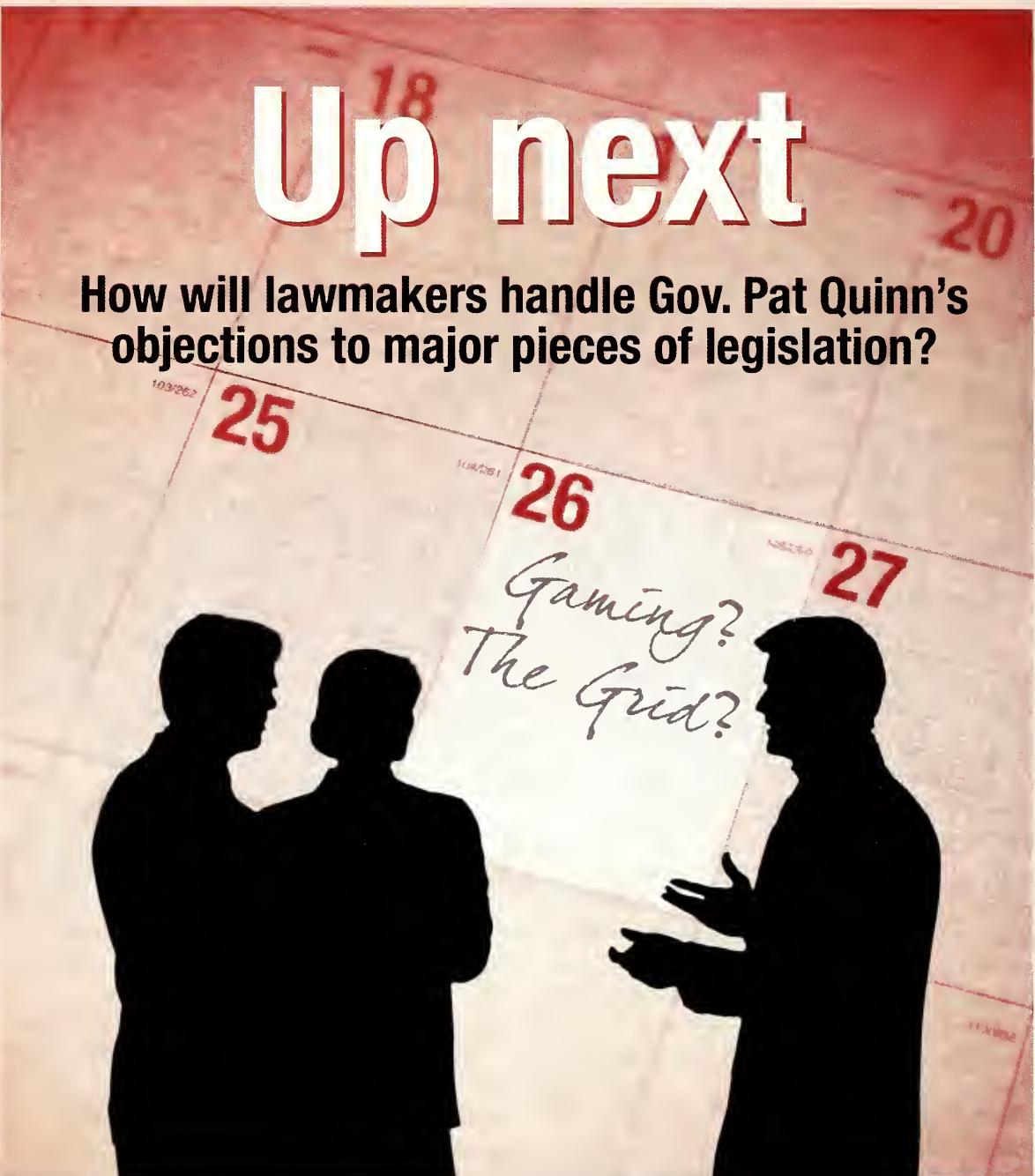
"Sometimes, you've got to tell friends not what they want to hear but what they need to know," Quinn says. He waved off the suggestion that Illinois has lined up with Wisconsin, Ohio and other states that may become historically identified with an epic assault on public-sector unionism.

Illinois union officials such as AFSCME Illinois spokesman Anders Lindall, though, aren't ruling out that possibility: "We've been saying all year, in the context of Wisconsin and elsewhere, that the labor movement in Illinois has faced every one of the same threats."

Kevin McDermott is the Springfield bureau chief for the St. Louis Post-Dispatch.



by Jamey Dunn



When lawmakers return to the Statehouse later this month for their fall veto session, they will have to decide — among other things — if they want to try to find ways to appease Gov. Pat Quinn, agree with his objections to several major pieces of legislation or override his vetoes and move ahead with plans that would change the landscape of two major industries in Illinois. Lawmakers also have to decide if they are willing to make budget changes Quinn says are needed to avoid the closure of seven state facilities and more than 1,900 layoffs.

When they wrapped up their regular session in the spring, among the bills they sent to Quinn was a budget that cut billions from the governor's original proposal. Lawmakers also sent a massive gaming expansion package and legislation that

proponents say could bring the state's electrical grid into the future while also changing the way customers' rates are set. Quinn says he does not approve of any of these plans in their entirety.

The governor has voiced concerns about **Senate Bill 744** up and down the state. The measure would create five new casinos, including one owned by the city of Chicago. New Mayor Rahm Emanuel has been pushing hard for the city casino, both publicly and reportedly in closed-door lobbying sessions with Quinn. The plan calls for slot machines at horse racing tracks, including slots at the track on the state fairgrounds in Springfield. Quinn opposes slots at the fair, which he says is a "family" place. He has called the bill "top heavy" and has raised concerns

that too many new casinos would create a “cannibalization” of existing Illinois casinos’ revenues, which have declined in recent years. He says he is worried about the state’s ability to regulate such a large expansion.

The Illinois Gaming Board urged him not to sign the legislation, with board chairman Aaron Jaffe calling it a “bad bill.” Jaffe, a retired judge, told reporters in July: “There are too many loopholes in that bill. I’ve said it before and I’ll tell you again: It’s 409 pages of garbage.”

It seems Quinn has taken Jaffe’s warning to heart. He has been repeating it to the news media for months. “There are parts of that bill that are very important when it comes to ethics in government and ethics in business,” Quinn told reporters in Chicago. “There are bad guys out there, criminal elements — organized crime — that want to infiltrate. And we’re not going to let them do it.”

Rep. Lou Lang, a sponsor of the legislation, says he is willing to work with Quinn and says he is crafting a second bill that would make changes to the gaming plan. He and other supporters hope that a so-called trailer bill that includes some compromises would allow Quinn to sign **SB 744**. “It would be very tough to pass a new gaming bill or an amended gaming bill that makes substantial changes,” Lang says. However, he says Quinn will not share specifics about what he would like to see changed. “It’s difficult to draft a trailer bill when you don’t know what it is that the governor is interested in doing and not doing.” He warns that any big changes could pull supporters off the plan because their support may hinge on getting a casino or slot machines in their areas. “No one should expect that a trailer bill would have huge or draconian changes to the core of that bill,” Lang says. Lang and the bill’s other sponsor, Waukegan Democratic Sen. Terry Link, say they are not willing to eliminate slots at racetracks.

The horse racing industry was a major backer of the legislation, claiming that slots at tracks could save racing in Illinois. Former Gov. Jim Edgar lobbied Quinn to sign the bill on behalf of the state’s horsemen. He says racing jobs are leaving Illinois because other tracks are able to offer larger prizes for race winners. “As I told him, he can either save the industry or let the industry disappear on this bill,” Edgar says. “In harness [racing], we’ve lost a lot of our good drivers who’ve moved out of state, and a lot of the horsemen have moved out of the state. Thoroughbreds — we’re just not competitive either, compared to Indiana and some other states.”

Edgar says the reality is that the state needs the cash that new gambling licenses and taxes would bring in. “The state’s broke. We’re a deadbeat. We don’t pay our bills. You’ve got to do things you don’t usually want to do. I can understand his reservation about all this more gaming, but the state needs money. This, to me, is an alternative that I think you’ve got to do because I don’t think you’re going to get many more tax increases. It’s obvious we don’t have enough money as it is, even with the tax increase they passed.”

Edgar presents another potential compromise: scaling back a controversial plan to allow video poker in bars and restaurants throughout Illinois. Legalizing video poker was part of a revenue plan to support the state’s capital construction program approved in 2009. Quinn said he had reservations about legalizing video poker, but he signed the bill. The implementation of video poker has stalled, and no licenses have been issued to businesses seeking the machines.

“If you talk to him, it’s all about video poker, and that’s a bill he signed [two years ago], which was a terrible mistake,” Edgar says. He says if video poker could be scaled down, then the new gaming expansion could be much easier for the Gaming Board to manage. Local governments currently have the choice to opt out of legalizing video poker, but Quinn has proposed that instead, they vote to opt in. Edgar says this would likely cut down on the number of local governments that allow it in their area.

As of press time, Senate President John Cullerton was using a parliamentary procedure to avoid sending **SB 744** to Quinn for fear of a veto. If Quinn vetoed the bill, supporters in the General Assembly would have to rally three-fifths majorities to override him. Cullerton says he plans to push a trailer bill that would give the Gaming Board more oversight and make the overall plan smaller, but he agrees that slots at racetracks are vital to the legislation. He says he hopes to send the original bill and a trailer bill to Quinn at roughly the same time. “The plan would be to have some finality to this gaming issue during veto session,” Lang says.

Lawmakers will consider another bill that Quinn is adamantly opposed to, **Senate Bill 1652**. The legislation would allow utility companies Commonwealth Edison (ComEd) and Ameren to increase customers’ rates up to 2.5 percent annually to pay for improvements to the state’s electrical grid, ranging from basic repairs to poles and lines to so-called smart grid technology that would allow utilities to prevent outages and customers to track their energy usage. The companies would be



The gaming expansion would allow gamblers to bet on horse racing at the state fairgrounds in Springfield when the fair is not under way. Revenues from the races would be earmarked for the horse racing and breeding industries. The bill also calls for slot machines on the fairgrounds.

required to invest \$3.2 billion in the grid over 10 years. ComEd would be required to create 2,000 jobs, and Ameren would have to create 450 jobs.

Opponents say the plan was written by utility lobbyists and see it as a way for the companies to lock in profits. Quinn — a longtime advocate for energy consumers and a founder of the watchdog group Citizens Utility Board — came out hard against the bill and ultimately vetoed it in mid-September. Doug Scott, chairman of the Illinois Commerce Commission, the agency that signs off on rate increases and which would oversee the utilities under the plan, says the bill strips the commission of too much oversight power. He says the rate increases can be spent on costs that have nothing to do with grid improvement. “It’s not just about smart grid, and it’s not just about infrastructure. All of the costs of the utility are built into the new procedure that’s set up. ... It’s not just meters and poles and cables or even personnel. But it’s attorney fees, advertising, charitable contributions, pension bonuses for executives — everything.”

Sen. Mike Jacobs, a sponsor of **SB 1652**, says he hopes to tone down the charged debate, which led to a scuffle between Jacobs and Lebanon Republican Sen. Kyle McCarter on the Senate floor shortly after the bill passed. “I think what we will try to do is try to lower the political rhetoric and try to focus on what the bill does,” says Jacobs, a Democrat from East Moline.

He says the need for grid improvement is inevitable, and the recent blackouts in the northern Chicago suburbs illustrate that demand. “When



Senate President John Cullerton

you are dealing with an old electric grid that was designed under Thomas Edison in today’s smart world, you’re going to have that.” Jacobs and House sponsor Rep. Kevin McCarthy, an Orland Park Democrat, say they are confident they can find the votes to override Quinn’s veto.

Recent allegations of lawmakers handing out scholarships to children of campaign donors or students who are not from their districts have helped to gather steam behind a renewed push to eliminate the legislative scholarship program. The legislature passed **House Bill 1353**, which would bar lawmakers from giving the waivers to family members. But Quinn issued an amendatory veto that would abolish the program entirely. One of the original bill’s sponsors supports Quinn’s veto. Sen. Kirk Dillard, a Hinsdale Republican, wants to push for a vote to approve the change. “Literally in one day, the legislature in the fall veto session can abolish these scholarships.”

Other legislators argue that the program offers opportunities to students who may not otherwise have them, such as low-income and minority students. But Quinn says the scandal-ridden program is beyond reform. “You can’t put perfume on a skunk. This system has had too many problems for too many years, and it’s time to abolish the legislative scholarship program and go forward with a better program.”

Quinn used his veto pen to carve out more cuts in the budget. He eliminated funding for regional



House Republican Leader Tom Cross

school superintendents, leaving them on the job without pay since the fiscal year began in July. The administrators handle a number of duties for the Illinois State Board of Education, including teacher certification, building inspections and training of new bus drivers. Quinn says his plan to shift the cost to local revenues will not emerge until the veto session.

The superintendents sued the state for their pay, but Sangamon County Circuit Judge John Schmidt ruled that he did not have the power to force Quinn to cut the checks. The group is considering an appeal and has turned to lobbying lawmakers to either support a plan to pay them at the local level or override the governor's veto. "Clearly, we must focus now on encouraging legislators to again stand with us and provide relief for this incredibly difficult situation as soon as possible," Bob Daiber, president of the Illinois Association of Regional Superintendents of Schools, said in a written statement after the judge's ruling.

Quinn also cut \$276 million in funds used to reimburse hospitals for providing care to low-income patients. Quinn's budget director, David Vaught, says the cut is intended to bring hospitals to the table to negotiate a decrease in their Medicaid reimbursement rates.

Rep. Sara Feigenholtz, a Chicago Democrat, says that she and others are negotiating with hospitals to try to find savings in the state's Medicaid system. However, she says the governor's cut alone will not

accomplish the rate decrease he seeks, and a change to the statute is needed. "We're all scratching our heads wondering how the governor expects the health care infrastructure in this state to survive."

Feigenholtz, who heads a House budgeting committee that deals with the hospitals, says lawmakers already delayed the cycle by cutting the money for reimbursement by \$400 million.

Quinn says that the budget lawmakers sent him will not fully fund state agencies through the fiscal year. He says he will have to close several institutions and lay off 1,938 people to keep "core" services afloat. The governor urged lawmakers to approve all of his budget vetoes so money can be shifted and some of the closures can potentially be avoided. The facilities Quinn says he plans to shutter are Tinley Park Mental Health Center, Singer Mental Health Center in Rockford, Chester Mental Health Center, Jacksonville Developmental Center, Jack Mabley Developmental Center in Dixon, Logan Correctional Center in Lincoln and Illinois Youth Center in Murphysboro.

Some see Quinn's announcement of the closures as a ploy to push for more spending by creating a crisis to spur lawmakers to action. Palatine Republican Sen. Matt Murphy says it is "grossly misleading" to imply that shutting facilities and laying off thousands of workers are the only cuts that could be made. "There are other ways to do this. ... You don't necessarily need to focus primarily where he did."

Lang predicts that lawmakers will have little desire to approve drastic changes to the budget they passed. "[House Speaker Michael] Madigan and [House Republican Leader Tom] Cross sat down and agreed that we are going to do the budget together," Lang says. "I don't think that there's going to be a big rush in the House, be it leaders in either party, to go behind or above or around that budget."

Proponents of reforms to the state's pension system also have vowed to push the issue again this veto session after an attempt to change future benefits for current employees fell flat during the regular session. Cross, who sponsored the plan, says interested parties, such as business and labor groups, have met on the issue while the legislature was on break. However, he says he cannot predict a timeline for when a new plan might be presented to lawmakers. "We are spending the summer, or trying to spend the summer, working with groups and to see if we can find any common ground. I don't know if we can find any common ground. ... I'm hopeful we can continue to talk and come up with a decent plan, but time will tell on that." ■

Institutions being considered for closure

Tinley Park Mental Health Center. The facility has a capacity of 75, a staff of 195 and an annual operating budget of about \$20.1 million.

Singer Mental Health Center in Rockford. The facility has a capacity of 76, a staff of 150 and an annual operating budget of about \$13.6 million.

Chester Mental Health Center. The facility has a capacity of 243, a staff of 464 and an annual operating budget of approximately \$34.7 million.

Jacksonville Developmental Center. The facility has 196 residents, a staff of 420 and an annual operating budget of about \$27.9 million

Jack Mabley Developmental Center in Dixon. The facility has 91 residents, a staff of 163 and an annual operating budget of about \$10.7 million.

Logan Correctional Center in Lincoln. The facility has a population of 1,980, a staff of 357 and an annual operating budget of approximately \$30.5 million.

Illinois Youth Center in Murphysboro. The facility has a population of 59, a staff of 101 and an annual operating budget of about \$8.6 million.

Two sides of the pension debate

Illinois Education Association
by Cinda Klickna



Cinda Klickna

With Illinois facing financial trouble and staring at a pension bill that has gone unpaid for decades, public employee pensions are under a microscope.

There have been calls for pension benefit reductions for active participants in the five state retirement

systems. Members of the Illinois Education Association belong to the Teachers' Retirement System (TRS), the State Universities Retirement System (SURS) and the Illinois Municipal Retirement Fund (IMRF). (Unlike TRS and SURS, IMRF is not a state-funded plan.)

There are multiple reasons why reductions in pension benefits are neither legal nor a viable solution to the state's budget woes. But, first, it's important to understand what public employee pensions are and are not. Pensions are deferred income, not a perquisite. Illinois public school teachers earn pensions as part of their overall income and help fund the pension system through substantial yearly contributions.

The Illinois Constitution states that membership in the pension systems "*shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.*"

Illinois Policy Institute
by Marc Levine



Marc Levine

In February, Illinois borrowed \$3.8 billion and paid a higher interest rate spread than any of the other 49 states. This means the financial markets believe that Illinois is the state most likely to default on its obligations.

In light of the state's diverse economy and general obligation debt levels, this default risk is entirely explained by Illinois' insolvent state pension system.

Given the detrimental impact default would have on retirees, schools, public safety, transportation and other government systems, this default risk must be reduced by reforming the pension system.

My analysis shows that the principal cause of the pension system insolvency is the explosion in cash benefits payable to state workers and teachers. According to the pension systems' actuaries, benefits payable over the next 12 years are nearly 2.5 times the benefits paid in the last 12 years.

Benefits then continue growing, eventually soaking up more than one-third of estimated state revenue. According to professors Joshua Rauh of Northwestern University and Robert Novy-Marx of the University of Rochester, the

Illinois Education Association ...

Despite this clear directive, legislation that would have diminished pensions for active participants in the five state retirement systems was proposed in the spring 2011 legislative session.

Senate Bill 512 offered three options for participants in these state retirement plans:

- Continue participation in the retirement system; receive the same benefit but pay significantly more for that benefit.
- Opt for lesser retirement benefits (example: a kindergarten teacher would teach until age 67).
- Choose a new defined contribution (401k-type) retirement program.

All three options diminish/impair the “contractual relationship” that became effective when active employees joined the retirement system. Therefore, **SB 512** is clearly unconstitutional. Should lawmakers pass the legislation, an expensive court fight would ensue, which the state is sure to lose.

Beyond the constitutional issue, there are clear economic issues to consider, proving that the current system is the best deal for employees and taxpayers.

Teachers don't receive Social Security; they pay into the pension instead.

Illinois is one of 14 states in which teachers do not participate in Social Security. In fact, two federal laws impact access to Social Security: the Windfall Elimination Provision (WEP) cuts any earned Social Security benefits gained through prior employment or a second job while teaching, and the Governmental Pension Offset (GPO) denies a teacher his/her spouse's full benefit in the case of the spouse's death.

The decision to exclude teachers from the Social Security system, decided decades ago, was based on sound financial thinking. A school district's pension contribution (0.58 percent of salary instead of 6.2 percent for Social Security) meant that more money could be spent on students' educational programs. Teachers picked up a larger share (now 9.4 percent of salary), and the state committed to making annual contributions.

Reducing benefits for Illinois educators amounts to cutting a hole in their financial safety net.

Underfunding by the state caused this problem. The retirement systems are underfunded by billions of dollars because political science has trumped actuarial science in Illinois. Since 1940, the state has never made its contribution based on a standard actuarial funding method. From 1953-2010, the difference between actuarially determined and actual contributions to TRS totaled more than \$14 billion, money that was redirected to more immediate priorities by legislators and governors.

Rather than raise sufficient revenue or create a state budget that pays the pension obligation and provides state

Illinois Policy Institute ...

present value of those benefits, taking into account employee contributions, appropriate discount rates and future service, is \$270 billion. Unfortunately, the pension system has less than \$70 billion in assets to meet those obligations, leaving a \$200 billion deficit/unfunded liability. The scale of this \$200 billion unfunded liability overwhelms the \$34 billion state budget. It simply cannot be repaid.

And it gets worse. According to the Illinois Commission on Government Forecasting and Accountability, over the next 12 years, Illinois is scheduled to contribute \$78 billion into the pension system, representing more than 20 percent of estimated state revenue.

But this amount in combination with employee contributions is dwarfed by the unrestrained growth in pension benefits. Illinois pension officials estimate that by 2024, after taxpayers have contributed this additional \$78 billion, the pension liability will nearly double and the current worst-in-the-nation ratio of assets to liabilities will not improve. The pension system will be in much worse shape than it is today.

Over the past 12 years, Illinois has contributed \$31 billion into the pension system, compared with employee contributions of about \$16 billion. This ratio of 66 percent state support for retirement is far in excess of private sector retirement support, in which employers pay 50 percent of Social Security deposits and typically less than 35 percent of 401(k) contributions. Illinois' pension funding has been and continues to be substantial.

In my opinion, the real cause of the problem has been politicians from both parties promising generous benefits that are out of proportion to private sector benefits and employee contributions. On average, full-time teachers earn \$84,000 as they near retirement. Upon retirement, their initial \$63,000 annual pension income grows 3 percent annually and, given teachers and state workers can retire as early as age 55, they enjoy this growing income for decades (actuaries estimate about 30 years).

If a retiring teacher were to purchase an investment annuity from a firm like New York Life or Vanguard to mirror these future pension payments, the value would be in excess of \$1.5 million.

Meanwhile, according to the 2011 Retirement Confidence Survey published by the Employee Benefit Research Institute, 81 percent of Americans above age 54 own less than \$250,000 in savings and investments. Illinois citizens are coming off a tough decade, with stagnant wage growth, relentless unemployment and a generational bear market in equity and home values.

It is fundamentally unfair for Illinois' private sector citizens, already worried they will outlive their own savings, to pay higher taxes for the lavish retirement packages of government workers.

Illinois Education Association ...

services at desired levels, lawmakers and governors used the pensions as the rest of us might use our personal Visa.

When a credit card bill isn't paid, the balance accumulates with interest charges. Even if you tear up your credit card, the balance is still owed.

The teachers and districts have always made their required contributions. The state's failure to do so has put us in this quandary.

Illinois teachers pay more and get less. An AON consultant stated that when compared to their counterparts in similar states, Illinois teachers pay 15 percent more for their retirement benefits, adding that Illinois teachers "receive a lesser benefit" than their colleagues in other states, "though they pay more for their benefit."

Reducing benefits won't fix the underfunding problem. Those making the argument that cutting benefits will fix the pension problem commonly confuse two key factors: normal cost (the actual cost of benefits earned in a year) and the unfunded liability. Let's put this in real numbers:

- The state's contribution to TRS for 2011 was \$2.24 billion. Only \$700 million was needed to cover normal cost, but an additional \$1.4 billion had to be added to help pay off the unpaid pension debt incurred decades ago. Had Illinois paid its bill over the decades, a \$700 million payment would have been required this year, an amount that would not have stressed the state budget.

Benefit changes would not create immediate revenue to pay the unfunded "credit card bill," which has risen to around \$85 billion for the five state systems combined. For example, asking teachers to pay an additional 1 percent on top of the already high 9.4 percent would only generate \$200 million (for all systems).

In the spring of 2010, claiming it would cut costs, lawmakers passed the Tier II plan, imposing major benefit cuts on newly hired teachers. State contributions to the retirement systems were lowered immediately, though significant actuarial savings will not materialize until 2056.

A 401(k) plan would undermine the systems and raise state costs.

This spring, **SB 512**, based on data from a business group's actuarial firm and using private pension plan rules rather than those required under public pension plans, was again presented as a cost-saver. This version proposed putting teachers into a 401(k) plan. Ironically, this change would worsen the state's fiscal position.

Moving current members to a defined contribution plan would reduce teachers' yearly contributions to the pension systems, thereby reducing revenue that would be generated by the sound investment policies of TRS.

TRS investments have regularly exceeded expectations; while the projected rate of return is 8.5 percent, the average annual return since 1982 is 9.8 percent. That investment

Illinois Policy Institute ...

While the pension system insolvency jeopardizes the future of Illinois, it is a more direct risk to the state's teachers and workers. Teachers pay 9.4 percent of each paycheck into the pension system. In exchange, they are promised future payments. But pension officials pay every nickel of these contributions to current retirees as fast as they receive them. Additionally, pension officials have been liquidating the pension investment portfolio to pay current retirees.

Given the possibility that the pension system will be unable to pay future benefits, the Civic Committee of the Commercial Club of Chicago retained Chicago law firm Sidley Austin to assess the state's legal liability. Sidley's opinion was unequivocal: "The state itself is not a guarantor of that obligation."

With past contributions and assets spent, and in the absence of a state guaranty, current state workers and teachers face the prospect of massive reductions in actual benefits when they retire. Projected employee contributions and realistic state contributions would cover less than half of scheduled benefits.

Younger state workers and teachers had nothing to do with creating the massive liabilities bankrupting the pension system and the state itself; they deserve a better alternative.

Some propose increasing taxes or debt as a solution. Coming on top of the recent 66 percent increase in the state income tax rate, additional tax increases are self-defeating, given the ease of employer exodus and the resulting adverse impact on Illinois economic growth and job creation. With respect to potential state borrowing to pay pension liabilities, financial markets have shut down for sovereign credits such as Greece and Portugal, and they can close to Illinois as well. Paying the highest interest rates of any state indicates a heightened risk of lending markets closing to Illinois.

We cannot tax our way out of the pension crisis, and we cannot borrow our way out of the pension crisis; we must reform our way out.

Reform opponents either deny the problem exists or blame the state. These are untrue and unproductive. Fixing the pension system requires two steps. First, Illinois needs to stop digging this financial hole deeper by moving all workers into a sustainable system for future retirement benefits.

The private sector has accomplished this by adopting defined contribution 401(k) accounts in which individual workers have their own accounts with their names on them. As many state workers are exempt from Social Security, some minimum benefit guaranty would be necessary. Pension reform legislation **SB512**, approved by the Illinois House Personnel and Pension Committee last

Illinois Education Association ...

revenue helps pay the pensions of 97,000 retired teachers and will help fund the future pensions of more than 170,000 teachers.

Moving to a defined contribution plan would raise the state's liability, as costs for a defined contribution plan are three times higher than for a defined benefit plan. With members' contributions directed toward a 401(k) rather than the pension fund's investments, less money would accumulate for current and future retirees. The entire sustainability of a pension for future and even current retirees would be in jeopardy.

The employees did not cause the state's pension problem, so holding them solely responsible for fixing the problem is not fair or reasonable.

So, what should be done?

Since benefits aren't the problem, revenue must be part of any solution.

Illinois' tax structure should ensure that equitable taxation is broad-based and stable. Too many individuals and corporations are able to legally avoid paying their fair share. Adopting the progressive income tax system would be a solid step toward a more fair tax system.

The demonization of public employee pensions has, for some, obscured the fact that these retirement plans are an investment that allows Illinois to continue to attract and retain quality educators to jobs that are crucial to the state's future.

With regard to TRS and SURS participants, if we agree that a well-educated workforce is essential in order for Illinois to recover its financial health, does anyone think we can reach that goal if public education is unable to continue to attract top-quality people to the teaching profession?

The Illinois Education Association is committed to working for solutions to problems. We are willing to consider proposals that are constitutional, fair, and will allow Illinois to continue to attract high-quality people to public education.

Cinda Klickna is president of the Illinois Education Association.

Illinois Policy Institute ...

May, would accomplish this, as would reforms enacted by states and cities across the nation.

But stopping the digging still leaves an estimated \$140 billion "legacy" unfunded liability owed with respect to previously earned benefits. The legacy liability can only be reduced through some combination of state taxes and borrowing matched by reductions in previously earned benefits payable to retirees and current workers. This requires either amending the state Constitution's vague "diminish and impair" language and/or legislation providing existing workers a choice to walk away from their at-risk previously earned benefits in exchange for a guaranteed benefit package going forward.

Earned benefit reductions may sound harsh but would be modest and far more equitable than the inevitable draconian cuts if reform is delayed.

Pension reform will provide state workers with still generous retirement benefits they can count on and protect current and future generations of Illinois residents from unlimited liability.

It is the essential policy to restore Illinois economic growth and job creation and return our state to a position of leadership.

Marc Levine is a founding principal of Chicago Asset Funding and a senior fellow in pension and investment policy with the Illinois Policy Institute.

Illinois national pension ranking

	State ranking
Pension assets as percent of liabilities	50
Total unfunded liability	49
Unfunded liability as percent of tax revenue	48
Unfunded liability as percent of state GDP	44

Source: The Pension Bomb, Joshua Rauh, The Milken Institute Review, First Quarter 2011

After abolition

by Kurt Erickson

Work remains for those who help the wrongfully convicted

Gov. Pat Quinn said his decision to abolish the death penalty in Illinois was driven by the need to eliminate any chance that an innocent person could be put to death.

The move was hailed by opponents of capital punishment as a watershed moment in reforming Illinois' criminal justice laws, while panned by death penalty supporters as a mistake that takes an important deterrent to crime off the books.

But Quinn's decision in March also may be having an unintended side effect: With the death penalty off the table, the public may perceive that problems within the criminal justice system have been fixed.

"One of my greatest concerns on the heels of passing the abolition of the death penalty was what effect it will have on the underlying problem that led to the wrongful convictions in those capital cases that provided the backdrop for having the abolition bill," says state Sen. Kwame Raoul, a Chicago Democrat.

Raoul, who sponsored the death penalty abolition legislation, is referring to a key part of the vote-getting strategy needed to collect enough legislative support to get the abolition bill to the governor's desk.

Among those who put a human face on the death penalty was Randy Steidl, himself a former Death Row inmate who spent 17 years behind bars — 12 on Death Row — after evidence was uncovered that proved him innocent in the murder of newlyweds Karen and Dyke Rhoads, whose bodies were discovered on July 6, 1986, in their burning home in Paris, Ill.

For anyone who believed Illinois still needed capital punishment, Steidl's story was a chilling example designed to persuade them otherwise.

Raoul is not alone in his concern.

Rob Warden, executive director of the Northwestern University-based Center on Wrongful Convictions, says the combination of the end of the death penalty and the rise in DNA testing could give the public the mistaken belief that it is nearly impossible to send innocent people to jail.

But, says Warden, "there are still lots of problems."

University of Illinois Springfield professor emeritus Larry Golden, who oversees the Downstate Illinois Innocence Project, agrees. He says much of the attention given to cases his group has taken on have been death penalty cases.

"It raised the stakes to know that somebody was going to be executed," Golden says. "There was a lot of attention paid to that. As a result, it took away attention from the bulk of innocence cases that aren't death penalty cases."

"There was so much focus on the death penalty that a lot of people are under the impression that now that the death penalty has been abolished, the problem has been solved," Golden says.

In August, Illinoisans received a timely reminder that all is not well in the state's criminal justice system. A group of more than 60 current and former prosecutors, judges and lawmakers signed on to a friend-of-the-court brief filed with the Illinois Supreme Court asking for new hearings for 15 incarcerated men who say they were sent to prison by confessions they say were tortured out of them by convicted Chicago police Lt. Jon Burge and his officers. Burge, who has never faced direct charges for abuse, is the poster boy for the kind of police misconduct that has spawned the innocence project movement.

Although there are innocence projects throughout the country, Illinois holds the dubious title of leading the nation when it comes to exonerations based on DNA evidence. Since the first DNA-related exoneration in 1989, Illinois has seen 97 people set free because the evidence showed they didn't commit the crime they were accused of.

At the University of Illinois Springfield, Golden launched the Downstate Illinois Innocence Project as part of a class on wrongful convictions.

The class' first investigation involved the case of Keith Harris. Ballistic evidence developed a year after Harris was convicted showed that he couldn't have committed the crime for which he was imprisoned.



Students in the Downstate Illinois Innocence Project gather with Julie Rea Harper, center, who was wrongfully convicted of the murder of her son.



Keith Harris, who was imprisoned for two decades for a crime he didn't commit, was exonerated after the Downstate Illinois Innocence Project got involved with his case.

Yet, even with this proof, as well as a confession by the real perpetrator, Harris remained behind bars. Within months of launching the class, the students had helped exonerate Harris, allowing him to be a free man after two decades of incarceration.

Other investigations followed, including the 2008 release of Herb Whitlock, who had spent 22 years in prison in connection with the Rhoads murders.

Whitlock's and Steidl's convictions were based on shaky testimony of two alcoholics, as well as a jailhouse informant.

Similar success stories abound at the Center for Wrongful Convictions, which was formed in 1998 and is credited with the exoneration of 23 people, including Alan Beaman, a Rockford man who spent 14 years in prison after being convicted of murdering Illinois State University student Jennifer Lockmiller, despite a lack of evidence directly linking him to her death.

Both organizations have a full slate of cases under way.

The Downstate Illinois Innocence Project, for example, last year received a grant of nearly \$700,000 — among the largest in UIS history — to help pay for DNA testing of 30 potentially innocent prisoners.

At Northwestern, Warden says the team has 50 cases on its hands.

"We're full steam ahead," he says.

Along with the moral problem of imprisoning innocent people, a recent report shows that the problem takes a toll on taxpayers.

In a study released in June, the Better Government Association and the Center on Wrongful Convictions tallied up the cost of incarceration, compensation paid to those who've been released and litigation costs in those cases to come up with a price tag for putting innocent people in prison. The total was \$214 million, but it could grow to more than \$300 million based on some of the preliminary work they've done on existing innocence cases.

Fresh from the success of getting the death penalty off the books, the two groups plan to continue pushing for legislative changes designed to ensure that innocent people aren't sent to prison.

Warden says he hopes to persuade Illinois lawmakers to approve new eyewitness identification procedures.

Rather than rely on standard police lineups, Warden favors a double-blind system, in which law enforcement personnel show photos to an eyewitness one picture at a time. The person showing the photos wouldn't be directly connected to the case to avoid tipping off the eyewitness to the alleged suspect through body language or verbal cues.

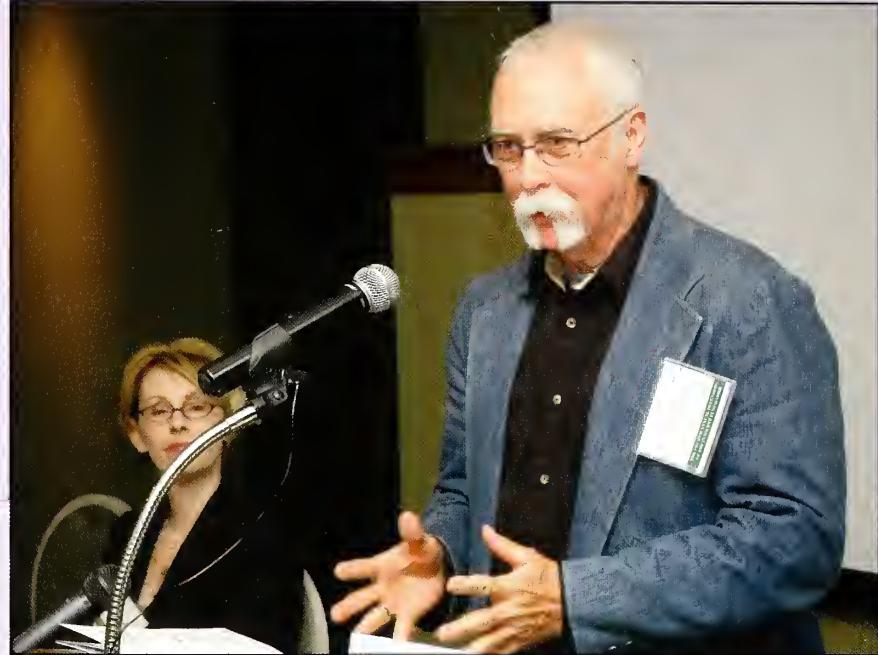
He believes the process could reduce misidentifications by 50 percent.

Warden also wants to form a state commission to review all exonerations. The panel would have the power to issue subpoenas to compel law enforcement officials to turn over records that have a bearing on the case.

Golden says he would like to see the appeals process changed. Currently, a post-conviction



Larry Golden, executive director of the Downstate Illinois Innocence Project



Herb Whitlock spent 22 years in jail for a murder he did not commit. In the background is his fellow exoneree Julie Rea Harper.

appeal goes back to the same judge who heard the original case. Golden said that doesn't make sense because the judge has a stake in the outcome of the appeal.

"The system is just terribly, terribly stacked," Golden says.

But just as the death penalty had its opponents, those ideas are likely to face a buzz saw of opposition from prosecutors, police and some lawmakers.

State Rep. Jim Sacia, a former FBI agent, says changing the eyewitness identification process could hamper police from catching the bad guys.

The Pecatonica Republican says police often use eyewitness identifications as just one step in the evidence-gathering process.

"To me, it's a lead. It doesn't mean it's that particular person," says Sacia, who voted against abolishing the death penalty.

Raoul says he plans to pursue hearings this fall to look at changes in eyewitness identification laws. He also says he wants to hear testimony on whether to expand the state's law requiring videotaping of all confessions in murder cases.

He says the 2003 videotaping law — pushed through the General Assembly in part by the Center on Wrongful Convictions — has worked to reduce police and prosecutorial misconduct and should now cover all violent felony crimes.

"Whatever fears that may have existed about it ... should be allayed," Raoul says. "I think law enforcement has found it a useful tool."

Although six other states have followed Illinois' lead on videotaping in murder cases, Sacia disagrees that it should be expanded. He said videotaping confessions often interrupts the flow of an investigation.

"When you've got a person talking, I want to keep them talking," Sacia says. "As a practical matter, it's not always ideal to stop an interview to set up a camera."

Warden says his idea of a commission could hold prosecutors' feet to the fire when it comes to putting innocent people behind bars.

"They don't like to admit mistakes because it makes the whole system look bad," Warden says.

Raoul, vice chairman of the Senate Criminal Law Committee, says he has problems with the idea of Warden's state commission on exonerations. He says reinvestigating those cases to find out what went wrong could compromise future investigations of the original crime.

Although Raoul is focused on pushing through more reforms, Golden is worried the push may not be a priority for other legislators in the wake of the death penalty abolition. Change, in Springfield, often comes in incremental steps.

"The problem we have now is that it is a struggle to get the policymakers to refocus on the need for resources to help people who were not sentenced to death," Golden says. ☐

Kurt Erickson is the Springfield bureau chief for Lee Enterprises newspapers.



Julie Hamos

Julie Hamos

Julie Hamos spent almost 12 years in the Illinois General Assembly representing a diverse House district in Cook County, championing laws to fight domestic violence and dealing with difficult urban issues involving mass transit, housing, the environment and human services.

But even that experience and years of toiling on behalf of low-income people and unionized workers didn't fully prepare this daughter of Holocaust survivors for the political and economic headwind she would face after Gov. Pat Quinn appointed her director of the Illinois Department of Healthcare and Family Services in April 2010. She began the job two months after losing the Democratic primary for U.S. Sen. Mark Kirk's former U.S. House seat in a race that eventually would be won by Republican Robert Dold.

Hamos, 62, a lawyer who lives in Evanston and is married to former state Appellate Court Judge Alan Greiman, heads one of the state's largest agencies. HFS operates with an \$18.5 billion annual budget, 2,241 full-time employees and a Medicaid program that covers 2.8 million Illinoisans. She is paid \$142,339 annually.

Her first year and a half on the job has been anything but calm.

The state's ongoing budget crisis is causing increases in payment delays for doctors, hospitals and others providing services to Medicaid patients.

Allegations by losing bidders that the state's contracting process for state employee group health insurance was unfair have landed Hamos and HFS in court and pitted her against some former colleagues on the legislature's Commission on Government Forecasting and Accountability.

Pressure from lawyers and others representing senior citizens and their families has put Hamos at loggerheads with the legislature's Joint Committee on Administrative Rules. She said the panel of lawmakers is jeopardizing billions in federal Medicaid matching dollars by blocking a 2005

federal law that restricts the ways seniors needing nursing-home care can shelter assets.

All of that is happening while Hamos works to implement a state Medicaid reform law designed to get more control over the spiraling costs of the program and improve the care that Medicaid patients receive. The law dovetails with a statewide health-insurance "exchange" that is scheduled to launch in 2014 as part of the federal Affordable Care Act.

But Hamos, who as an 7-year-old girl fled Hungary with her family during the Hungarian Revolution in 1956, hasn't lost her sense of humor and the ability she displayed as a legislator to multitask and avoid becoming cynical. She mixed laughter with concern during a wide-ranging interview with Dean Olsen for Illinois Issues in her Springfield office. The following is an edited version of that discussion.

Q. Why did you decide to become a member of the governor's Cabinet, especially at this time, when the budget situation is so challenging?

I was offered this job three weeks after the president signed the Affordable Care Act. And I knew it was coming down to the state level and that Illinois had to get it right. This was the president's state. It was going to be an incredibly important challenge to implement national health care reform. And that was a very big, exciting challenge to me, and that's really why. And I respect the governor. This is a good governor, with a good heart, a good set of values. I've known him for a long time.

Q. What has the transition been like for you from legislator to member of the executive branch?

It makes me realize how much easier my previous job was, although running for office has

its set of challenges. Of course, you have to be very active and involved in your community and spend a lot of time at it. And you have to spend a lot of time raising money — that's not fun. But in terms of policymaking, it was something I knew, I enjoyed. I did take on big, challenging issues. I had a good degree of success. Now, I have to really deliver health care for 2.8 million people on Medicaid and 420,000 people in the group health insurance plan. We have to implement laws in a very different way, and it's a big responsibility to do this well and to create an efficient, effective system. So it's a much different level of responsibility.

Q. *What sort of surprises have you encountered in this job?*

The biggest surprise, and still the biggest challenge, is how slow the bureaucracy moves. It is stunning. The procurement process is very lengthy, and it takes an amazing amount of effort to contract with good vendors that we need to help do our work. And then the second part of it is that for the Medicaid program, more than any other program probably, it crosses so many other agencies. As a legislator, I complained about it, I saw it, but I didn't realize how hard it is to break down the silos of government, and we have to do it every single day because our Medicaid clients have issues and needs that affect the Department of Human Services, Department of Public Health, Department on Aging. We just cross a lot of different agencies.

Q. *You can't tell those agencies what to do?*

Correct.

Q. *They have their own bureaucracies, don't they?*

Right. So that's a big challenge, I'd say.

Q. *You work for a governor who says he's progressive. There are certain things in state government that aren't possible to change?*

It's slow.

Q. *Does it need to be that slow, or is it just the nature of government?*

I don't think I know the answer to that. But we are a 96 percent unionized workforce. I support

unions, but I also think we need managers. I'm OK with a balance. We don't have enough managers, and we haven't treated our managers as well as we have our unionized workforce. That's a problem, so it's difficult to attract people into state government right now because they are subject to furlough days — it's really the merit comp employees who have gotten the short end of the stick here. And that's why so many people have gotten into the union and have wanted into the union. The union rolls have increased substantially since the Blagojevich period because we haven't treated the managers very well.

Q. *You have talked about how you're changing Medicaid from a program that processes claims to a health-care delivery system. What's the status of that transition?*

This is a very important culture change inside our agency right now. We are not just focused on paying bills and bringing in federal Medicaid match. We are much more focused now on how we can get our providers to deliver health care so that there are better health outcomes, so people are healthier. We believe that we can save costs in Medicaid by keeping people healthier. And that means doing more preventative health care and getting people more effective health care at better costs, and that's really our strategy. And I think it will really pay off, and it's to me the underlying theme of national health-care reform ... and what I now believe, more than ever, is going to be demanded of us moving forward. "Care coordination" is what we're really talking about. That will, in fact, produce better results, and it will be a more effective health-care delivery system. But it's a big change.

Q. *What's the status of the health-insurance exchange that Illinois plans to create through the Affordable Care Act?*

We are actively planning for the health-benefits exchange — our agency and the Department of Insurance. What's exciting about this for us is there are two components for the exchange: a consumer-friendly website where individuals and small businesses will, in a very easy way, look at offerings of health-insurance products, compare them, figure out what they want to buy and to sign up for it. And in some cases, people will sign up for it, and they will qualify for Medicaid because they will be under a certain income, and in other ways, they will qualify for tax subsidies to help them pay

for health insurance. The part where they will qualify for Medicaid is a very important component of our work because we need to streamline and make more efficient our whole system of enrolling Medicaid clients.

Q. Would you like to get the exchange up and running early — before 2014? (The federal law allows early implementation, but the big federal subsidies for covering the estimated 600,000 to 700,000 people who will be added to Illinois' Medicaid program won't be available until 2014.)

I've been resisting that. Under our state Medicaid reform law, right now we're under a two-year moratorium not to expand eligibility for Medicaid. The legislature wanted us to put it in that bill, and we agreed with it because our Medicaid budget is already very constricted. We will be bringing into the Medicaid system a whole new group of people, and many of them are people who have not had access to health care. They're going to be sick. They're going to be needy. They're going to be substance abusers. They're going to be ex-offenders. They're going to really need good health care. But we have to fix the care-coordination system first, because just to bring in a whole bunch of people and have them shop around would cost a lot of money, and it wouldn't be the most effective health care.

Q. Your agency has launched a pilot project for care coordination involving 40,000 disabled adult Medicaid recipients in the Chicago area. How is that project going?

It really got launched a few months ago. The biggest problem we've had, and I'm really concerned about it, is that [some] clinics, doctors and hospitals don't want to sign up for the program. Even when they've been serving their disabled patients for a long time, they refuse to sign up for this. We don't understand what's going on exactly. This is new for Illinois. It's not the old Medicaid system. We're trying to convince all these different groups out there that this is the future. If there's been any problem at all in getting that organized, it's really that.

Q. Does that situation not bode well for the future of care coordination in Illinois?

It's something we have to work on. I think, in

part, Illinois has been pretty resistant to managed-care companies, not only in Medicaid but in the private market. Doctors and hospitals don't like anybody looking over their shoulder. We want somebody looking over their shoulder. It's a difference of philosophy. We think that better coordination will mean, in fact, somebody asking questions about the care being received.

Q. What do you think is your biggest challenge right now as the director?

Every single thing I'm doing is a challenge as the director. I can show you my calendar — all day long, every day. I have had a long history and a very exciting career of making change and being a policymaker. But being a change agent is very difficult, and ultimately, people are fearful of change. It's very difficult to be a positive force for change but to really push the envelope on getting people to change the way they do things.

Q. Are there any misperceptions about Healthcare and Family Services?

I think there are misperceptions about the Medicaid clients that we serve. I'm troubled when I read emails I receive that are very angry at low-income people who depend on Medicaid and who depend sometimes on some other welfare benefits. We have 2.8 million recipients. I'm sure there's fraud. I'm sure there's abuse. There's no question about that. I would like very much to attack it and root it out. That's a big goal of mine because the integrity of the program is very important to me.

Q. Have you lost any friends in the legislature, or have relationships been strained, because of what you've had to do as director?

I think I've had a little bit of a honeymoon with the legislature, but honeymoons do end. I've said to them, "This is going to be hard, and we're going to be at different sides of a table." It's going to be difficult. We are taking on so many big challenges. Some of them could fail. We can't assure perfection in all things.

Dean Olsen is the medical/health reporter for the State Journal-Register in Springfield.

Shifts at the top

Kevin Casey is the new director of the developmental disabilities division for the Illinois Department of Human Services.

Casey, a former special education teacher, has served in a variety of roles in working with those with developmental disabilities, most recently as the executive director of the Disability Rights Network in Pennsylvania. Until earlier this year, he was chief of the office of developmental programs for the Pennsylvania Department of Public Welfare.

Casey has a bachelor of science degree in social science and a master's degree in special education from Illinois State University.

"I am pleased to announce the appointment of such an experienced public servant to lead the key division serving people with developmental disabilities," said IDHS Director Michelle Saddler in a prepared release.

"His knowledge and expertise in budgets, planning and administering state and federal regulations will be invaluable during these challenging economic times."

Erwin McEwen stepped down last month as director of the Illinois Department of Children and Family Services.

McEwen, who was appointed to the position in 2006 by then-Governor Rod Blagojevich, is leaving the agency to pursue other professional opportunities.

"My commitment is to protect children by strengthening and supporting families, and it's time for the next challenge in that campaign," McEwen said in a prepared statement. "It's been an honor to lead one of the country's most reformed child welfare systems, and to move beyond reform to innovation. In ways never done before, we are now reaching out to families to help them succeed before a crisis occurs. My goal is to continue to advance that cause in our state and across the nation."

McEwen has a bachelor's degree in economics from Illinois State University and a master's degree in social service administration from the University of Chicago.

Photograph by Jamey Dunn



Lt. Gov. Sheila Simon performs on the banjo with her bluegrass band, Loose Gravel, at the Illinois State Fair in August. The five women have played together for the past 12 years.

Fall 2011 Lunch and Learn Series:
Landscapes of the Mind

Co-sponsored by the UIS Alumni SAGE Society, UIS Office of the Chancellor and the Illinois State Historical Society

September 27: Landscapes of the Public:
Jens Jensen – Native Landscape Architecture

Jens Jensen was one of the most influential designers to popularize native gardens. He showed that beautiful gardens can have native species, and can appear in their respective places as they would be without human involvement. Jensen's legacy can be seen in major parks in Chicago and Lincoln Memorial Gardens in Springfield.

October 28: Landscapes of the Judicial System: Conviction – Guilty or Innocent?

Guilt or innocence – either can result in conviction. The Downstate Illinois Innocence Project (DIIP) was founded at UIS to address the nature and severity of conviction of the innocent. Problems and possible reforms of a criminal justice system which can result in conviction of the innocent will be shared, along with past case experiences.

December 8: Landscapes of Memory: The Civil War as Illinois History

During the Civil War, the state of Illinois was a pivotal resource for war efforts. More than 250,000 Illinoisans served in the Union army. The state's geographic location and resources made it ideal for housing military supplies, and sites for POW camps, prisons and "brownwater" navy yards. Illinoisans such as Lincoln, Grant and Logan played prominent roles in the war.

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Corrections

Captions that appeared in September's *Illinois Issues* misidentified Lexington Elementary School in Maywood and incorrectly cited state Sen. Kimberly Lightford's title. Also, because of a typographical error, Cook County Board President Toni Preckwinkle's name was misspelled. *Illinois Issues* regrets the errors.

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Inspector wants lawmakers to focus on their own shop

**Charles N. Wheeler III**

In the last couple of years, Illinois has adopted an impressive — by historical standards, anyway — array of ethics reforms.

Campaign contribution limits, a ban on pay-to-play contracting, new conflict-of-interest and economic disclosure requirements for members of state boards and commissions, independent procurement officers and purchasing monitors, stronger whistle-blower protection, tighter revolving door prohibitions and more. It's a lengthy list, tailored closely to the kind of questionable behavior that has one former governor in federal prison and another on his way.

Now, Legislative Inspector General Tom Homer wants the General Assembly to focus on its own shop, beefing up the law setting out rules of conduct and ethical principles for lawmakers.

The coming fall legislative session, one might suggest, would be a good time to begin the task of overhauling a statute that has remained largely unchanged in the 44 years since its enactment.

Like virtually every ethics measure ever adopted here, the 1967 law followed embarrassing revelations about legislative wrongdoing, touched off most notably by a 1964 article in *Harper's Magazine* titled, *The Illinois Legislature: A Study in Corruption*, co-authored by state Sen. Paul Simon, then early in his long and honorable career advocating for good government.

In the article, Simon detailed vote-buying, shakedown schemes, rampant conflicts of interest and other misbehavior. The piece won Simon few friends in the legislative chambers, but its fallout ultimately led to creation of a Conflict of Interest Laws Commission. The panel's recommendations became the basis for the 1967 law, with the notable exception of its proposed Board of Ethics to monitor the code of conduct, left out of the legislation.

But the law's chief failing, Homer said in a recent letter to all 177 legislators, is its lack of any enforcement mechanism to deal with conflict-of-interest violations. In fact, the law's "ethical principles" section states specifically that its provisions "are intended only as guides to

legislator conduct, and not as rules meant to be enforced by disciplinary action."

So lawmakers are free to vote to benefit their own financial interests, with little fear of sanction under the toothless law.

"The absence of penalty provisions undermines our ability to investigate, expose and prevent abuses," Homer wrote to lawmakers. "Even the appearance of conflicts of interest by legislators perpetuates public cynicism."

Homer, a former legislator and appellate court judge, was appointed inspector general in 2003, when the position was created as part of ethics reforms in the wake of scandals embroiling former Gov. George Ryan.

At that time, and in the latest round of reforms inspired by former Gov. Rod Blagojevich's shady dealings, the legislative conflict issue received relatively little attention from reformers.

"The idea of conflicts was never a front-burner item," Homer noted. "But it's always been on my radar. ... It's been a source of frustration for some period."

His office receives complaints that he believes warrant action, but unless an allegation involves potential criminal activity, which is referred to law enforcement officials, there's not much he can do in conflict situations.

To change that, Homer proposes that the Legislative Ethics Commission be empowered to hear potential violations brought to it following investigation by the inspector general. The commission would hear the case, make a determination, and if a violation occurred, report its findings publicly and impose a penalty, which could be a fine or a recommendation that the legislature censure the offender.

"We need to put teeth into the law, to prohibit debating, or voting, or sponsoring a bill when it's a conflict of interest," he said.

One challenge, though, is to define exactly what constitutes a conflict. Under the current law, a conflict involves "a substantial economic interest, distinct from that of the general public." Specific cases can be tricky, though. Few would see a

conflict in lawmakers providing perks like reduced license fees and property tax breaks for senior citizens, even though seniors aren't the general public and lawmakers hope to live long enough to enjoy the perks. However, few would condone a city alderman voting to rezone property he secretly owned to increase its value. But should a lawmaker whose kids attend a private school sponsor a tuition tax credit bill? Or should a lawmaker who's also a hog farmer be involved in crafting environmental legislation?

Homer believes the issue arises when "a narrow interest is being served ... distinct economic benefits that benefit you or a member of your family, or a close associate." The trick, he said, is to craft reasonable guidelines and exceptions, and provide due process safeguards so the law isn't arbitrarily implemented by the panel overseeing it.

To help the public identify potential conflict situations, Homer also wants lawmakers to require more detailed disclosure of economic interests. The current disclosure form offers little insight into a public official's economic interests; typically, most respondents answer "not applicable" in all its categories. Homer favors the more detailed form judges must complete, which provides greater information about potential

conflict situations, such as debts, family members' jobs and any financial relationship that could present a conflict.

Whenever the issue of tougher ethics standards or more detailed financial disclosure comes up in Illinois, someone always raises the possibility that the new laws will drive talented people away from public service. Indeed, in its 1967 report, the conflict of interest panel expressed concern that the conflict rules not be "so severe that they would tend to deter men of ability and integrity from standing for legislative service."

But Homer discounts that fear: "There's no shortage of people that come forward to run for office. It's no deterrent to Congress," which has tougher disclosure standards than Illinois.

"Legislators should be precluded from profiting in any way from their legislative initiatives and actions," Homer told lawmakers in closing. "Strong new ethics laws and effective enforcement provisions will help restore public confidence in state government."

A lofty goal, to be sure, but one sorely needed in the Land of Lincoln. ■

Charles N. Wheeler III is director of the Public Affairs Reporting program at the University of Illinois Springfield.

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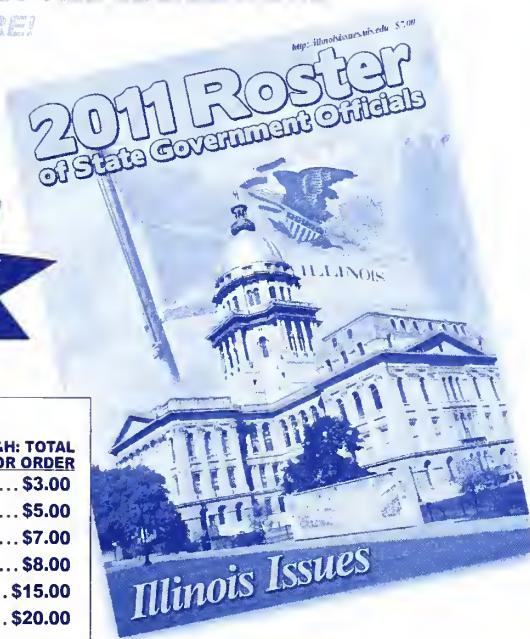
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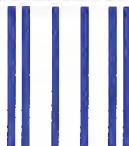
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